TRANSCRIPT

SUPREME COURT OF THE UNITED

OCTOBER TERM, 1900.

No. 174.

JAMES STILLMAN, APPELLANT,

vs.

C. R. COMER, INDEPENDENT EXECUTOR OF THE ESTATE OF STEPHEN POWERS DECEASED, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS.

FILED JANUARY 24, 1900.

(19,201.)

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1 *Caption.*

United States Circuit Court, Southern District of Texas, Holding Sessions at Brownsville, December Term, A. D. 1903.

Hon. Waller T. Burns, U. S. district judge, presiding.

C. B. COMBE, Independent Executor of the Estate of Stephen Powers, Deceased, and C. B. Combe, Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph K. Combe, and Emile P. Combe, Complainants,

vs.

JAMES STILLMAN, THOMAS CARSON, THOMAS Carson, Administrator of the Estate of Maria Josefa Cavazos, Deceased; Leocadio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Mat Gerhardt, J. L. Landrum, Juan Salinas, Francisco Yturria, Henry Miller, Charlotte Miller, Charles S. Dana, Maria Grogan Dana, Frances E. Landrum, Agnes Anastacia Browne, J. A. Browne, Lilian Mary Hicks, Administratrix of the Estate of Annette P. Hicks, Deceased; Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Mary B. Woodhouse, Independent Executrix of the Estate of H. E. Woodhouse, Deceased, Defendants; Pedro G. Cavazos, Migueal Garcia Cavazos, Francisca Garcia Cavazos de Treanor, Rafaela M. de Garcia Cavazos, Rafael G. M. Cavazos, Josefina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, Jose G. M. Cavazos, G. H. Giddings, S. J. Brooks, Receiver; C. L. Bates, W. N. Parks, Duval West, Intervenors.

No. 21. In Equity.

2 Be it remembered that in the above entitled and numbered cause, in which a final decree was rendered by said court, at the regular December term thereof, 1903, towit: on the 12th day of December, 1903, the following proceedings were had, to wit:

3 *Original Bill, Ancillary Suit. Filed June 14th, 1897.*

In the Circuit Court of the United States in and for the Western District of Texas, Sitting at Brownsville, Texas.

C. B. COMBE, Independent Executor of the Last Will and Testament of Stephen Powers, Deceased, Plaintiff,

vs.

JAMES STILLMAN and THOMAS CARSON, Administrator with the Will Annexed of the Estate of Maria Josefa Cavazos, Deceased, Defendants.

} In Equity.

To the judges of the circuit court of the United States for the western district of Texas, in equity, sitting at Brownsville, Texas:

C. B. Combe, of Brownsville, Texas, a citizen of the State of Texas, as sole independent executor of the last will and testament of Stephen Powers, late of Cameron county, Texas, now deceased, brings this, his bill, as independent executor, as aforesaid, for and on behalf of the estate of said decedent, Stephen Powers, against Thomas Carson, as administrator with the will annexed of the estate of Maria Josefa Cavazos, late of Cameron county, now deceased, and in his own right, Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, Francisco Yturria, R. D. Hinojosa, and H. E. Woodhouse, all of Brownsville, Texas, and citizens of the State of Texas; Henry Miller, of Chicago, Illinois, and a citizen of the State of Illinois, Cook county; and Charlotte Miller, of Brownsville, Texas,
4 and a citizen of the State of Texas: Matt Gerhard, of Los Angeles, Cal., a citizen of the State of California; Charles S. Dana and his wife Maria Grogan Dana, of Boston, Mass., citizens of the State of Massachusetts, and James Stillman, of New York city, a citizen of the State of New York; and thereupon your orator complains and says:

II.

Plaintiff represents and avers that he and the said defendants, Thomas Carson, Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, Francisco Yturria and H. E. Woodhouse, are all citizens of the State of Texas and reside in Cameron county, Texas; and R. D. Hinojosa is a citizen of the State of Tamaulipas, Republic of Mexico; and Henry Miller is a citizen of the State of Illinois, and resides in Chicago, Cook county, Ill., and Charlotte Miller is a citizen of the

State of Texas, and resides at Brownsville, Texas; and Matt Gerhard is a citizen of the State of California, and resides in the county of Los Angeles, Cal.; and Charles S. Dana and his wife Marie Grogan Dana, are citizens of the State of Massachusetts, and reside in the city of Boston in said State; and James Stillman is a citizen of the State of New York, and resides in the city of New York.

III.

Plaintiff further avers that on or about May 1, 1846, Zacharia Taylor, then a brigadier general of the Army of the United States, and commanding a military force of the United States Army, in the State of Texas, on the lower Rio Grande, and acting for and under the authority of the United States, at the city of Brownsville, in Cameron county, State of Texas, forcibly entered upon and took possession of a certain tract of land, and established thereon for the United States, a military fort, garrison and reservation, and forcibly occupied the same by and with an armed military force of the United States, said tract of land being situated in Cameron county, Texas, on the Espiritu Santo grant, known as Fort Brown military reservation, and described as follows, to wit:

Beginning at a point on the left bank of the Rio Grande river, adjoining the city of Brownsville, where a line in the center of 14th street of said city moving southwestwardly, strikes the said river; thence north 57.25 degrees east, on a line running thirty (30) feet west of the quartermaster's wall now there standing, two thousand (2000) feet to the center of Monroe street, in said city, intersecting the city limits of Brownsville; thence south 61 degrees east, three thousand four hundred and fifty (3,450) feet to a mesquite post set for a corner; thence south 30 degrees east, nine hundred and fifty (950) feet to low water mark of the Rio Grande river; thence up the said river at low water mark, as the same winds and turns, about fifteen thousand (15000) feet to the place of beginning; centaining about three hundred and fifty-eight and eight-tenths (358.8) acres of land.

From the said May 1, 1846, the whole of said tract of land has been in the actual and exclusive possession and occupation of the United States as a military reservation.

IV.

Plaintiff represents unto your honors, that at the time the military forces of the United States took possession of said tract of land, the same was private property, belonging to Miguel Salinas and others, then resident citizens of the State of Texas, to whom no compensation was ever made for, and from whom no title was ever acquired by the United States, except at the time and in the manner hereinafter stated.

V.

Plaintiff avers that the aforesaid Stephen Powers, in his life time, for a valuable consideration, acquired a perfect and valid legal and equitable title in fee-simple to an undivided one-half (½) of said lands, by a complete chain of title from the sovereignty of the soil to himself; and on February 5, 1882, he, the said Stephen Powers, at his late residence in the city of Brownsville, Cameron county, Texas, died lawfully seized in fee-simple of said undivided one-half of said land, having theretofore, in due form of law, made, published and declared his last will and testament and codicil thereto, which
6 will and codicil were, on March 30, 1882, in due form of law, admitted to probate, as such, in and by the probate court of Cameron county, Texas, a certified copy of which will, codicil and probate are hereto attached, marked Exhibit "A," and made part of this bill.

In and by said will and codicil, the said decedent, Stephen Powers, devised his said undivided one-half of said land, in fee-simple, share and share alike, to his two daughters, and two step ½ daughters, viz: Agnes Anastacia Powers, now the wife of J. A. Brown, Cameron county, Texas; Frances Euphemia Powers, now the wife of J. L. Landrum, of Cameron county, Texas; Annette Pauline Impy, who was the wife of B. O. Hicks, now deceased, of Cameron county, Texas; and Kate Maria Impy, now deceased, but who was in her lifetime the wife of this plaintiff. In his said will and codicil, said decedent, Stephen Powers, nominated and appointed plaintiff, C. B. Combe and B. O. Hicks, as independent executors thereof, exempted them from bond, and directed that no action should be taken by the probate court upon his estate, except to probate his said will, and the filing, by his said executors therein, of an appraisement and inventory of his estate, which was done in due form of law. On April 7, 1882, this plaintiff and said B. O. Hicks duly and lawfully qualified in the probate court of Cameron county, Texas, as the independent executors of said will, a certified copy of which qualification is hereto attached, marked Exhibit "B," and made a part of this bill. And they, the said plaintiff and B. O. Hicks, entered upon the discharge of their duties, as such executors, and continued to jointly administer said estate and execute said will, until the — day of November, 1887, on which date said Hicks departed this life, and since that time this plaintiff has continued to administer said estate as sole independent executor, and he is now such independent executor.

VI.

Plaintiff alleges that from May 1, 1846, down to the present time, all the persons and estates named as parties to this suit, as well as the persons and estates under and through whom they claim,
7 have, in various ways, asserted claim to parts of the aforesaid tract of land known as Fort Brown military reservation, hereinbefore described by metes and bounds, and have sought pay-

ment for the same and the use and occupation thereof from the Government of the United States, and to extinguish said claims, and pay the owners for said land and the use and occupation thereof and to vest a good and valid title thereto in the Government, the Congress of the United States, on March 3, 1885, made an appropriation in the words following, to-wit:

"To enable the Secretary of War to acquire a good and valid title for the United States to the Fort Brown reservation, Texas, and to pay and extinguish all claims for the use and occupancy of said reservation by the United States, the sum of one hundred and sixty thousand dollars; provided, that no part of this sum shall be paid until a complete title is vested in the United States; and the full price, including rent shall be paid directly to the owners of the property."

VII.

Plaintiff further avers that on June 9, 1886, the said defendants, Leocadio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, and Juan Salinas, as the heirs of Miguel Salinas, deceased, filed suit against William L. Kellogg, who was then a colonel of the United States army, commanding officer of said Fort Brown reservation, in the district court of Cameron county, Texas, to recover the title and possession of a part of said Fort Brown reservation, and for rents and for use and occupation, being suit No. 1458, on the docket of said court. The part of said reservation claimed in said suit, is described in the petition of the plaintiffs therein as follows, to-wit:

"A large tract of real estate lying and being situated in the county of Cameron, and State of Texas, and on the north and left bank of the Rio Grande river, opposite the city of Matamoras, Mexico, and a part of the original grant and tract called Espiritu Santo,
8 granted by the Spanish government in A. D. 1781, to one de la Garza, containing one hundred and fifty acres of land more or less, anciently called the labor of land which was held under lease by one Dona Maria de Jesus Escamilla, prior to the year 1833, and in that year (Sept. 20th, 1833) purchased by Escamilla from Dona Francisca Cavazos, and is bounded by the land anciently called Luz Rendous land as far as the main watering place of the pasture ground, on the left bank of the Rio Grande river."

And on June 30, 1886, defendant, H. E. Woodhouse filed in said cause his petition of intervention, claiming to be the owner of the undivided interests of Higinio Salinas, Alejandro Salinas, Jose Maria Salinas and Bernardo Salinas, in said land, inherited by them from their ancestor, Miguel Salinas. And on October 28, 1886, said William L. Kellogg, obtained an order removing said suit to the United States circuit court for the Western district of Texas, at Brownsville, and on November 23, 1886, a transcript of all the proceedings in said suit in the district court of Cameron county, Texas, was filed in

the United States circuit court at Brownsville, and said suit was entered upon the law docket of the United States circuit court, being numbered "248, Heirs of Miguel Salinas *vs.* William L. Kellogg," and was proceeded with as a suit pending therein.

And plaintiff further avers that on December 27, 1886, Rudolph Kleburg, U. S. district attorney for the western district of Texas, by instruction of the Attorney General of the United States, appeared in said suit No. 248, Heirs of Miguel Salinas *vs.* William Kellogg, and intervened for the United States and made them parties defendant therein, and filed answers for said Kellogg and the United States, and among other things pleaded not guilty, and set up outstanding title to Fort Brown reservation in the said defendants herein, towit: Pedro G. Cavazos, James Stillman, Thomas Carson, as administrator with the will annexed of Maria Josefa Cavazos, deceased; C. S. Dana and his wife Maria Grogan Dana; H. E. Woodhouse; Francisco Yturria; Matt Gerhard; Charlotte Miller; and also the heirs of Stephen Powers, deceased, this plaintiff's testator. And in said answers the said United States district
9 attorney prayed that all of said persons be made parties defendants in said suit, in order to reach a final adjudication of the true title to said Fort Brown reservation. And on January 6, 1887, said district attorney filed in said cause a formal motion to make the above named persons and the heirs, devisees and executors of Stephen Powers, deceased, and some other parties defendants in said suit, which motion was sustained by the court, and citation was issued to some of said new made parties defendants; but the defendants herein, James Stillman and Thomas Carson administrator, and some others, waived process and service in said suit No. 248, and voluntarily entered their appearance and filed therein answers and pleas in reconvention.

VIII.

Plaintiff further represents unto your honors that on July 11, 1887, the said defendant herein, James Stillman, filed his answer and plea in reconvention in said suit No. 248, in and by which he claimed to be the owner in fee-simple of an undivided one-half of the whole of said Fort Brown reservation, and attempted to deraign his title; he also denied that either or any of the plaintiffs, intervenors or defendants owned any interest in said reservation except the estate of Cavazos represented by defendant Thomas Carson, administrator, which he, Stillman, alleged owned the other undivided one-half in fee-simple, and on said date, July 11, 1887, the defendant herein, Thomas Carson, administrator of the Cavazos estate, with the will annexed, filed his answer and plead in reconvention, in said cause No. 248, in and by which he claimed that said estate owned one undivided one-half of said Fort Brown reservation in fee-simple, and denied that any of the plaintiffs, intervenros or defendants in said suit owned any part of said reservation, except the said defend-

ant, James Stillman, who he alleged, owned the other undivided one-half of said reservation in fee-simple, and attempted to deraign the title of said estate to said land; they the said defendants James Stillman and Thomas Carson, administrator, as aforesaid, alleging and claiming in and by their said answers that said James Stillman, and the said estate of Cavazos, owned the whole of said Fort Brown reservation, in fee-simple absolute, and also the rents
10 and compen-tion owing by the United States for the use and occupation thereof from May 1, 1846, to the date of filing said answer.

And on July 12, 1887, this plaintiff and said Hicks, as independent executors and representatives of the estate of Stephen Powers, deceased, and Charles S. Dana and his wife, Marie Grogan Dana, filed their joint answer and plea in reconvention in said suit No. 248, in and by which they alleged and claimed that the said estate of Stephen Powers, deceased, and Marie Grogan Dana owned an undivided one-half of said Fort Brown reservation and deraigned their title thereto. And on July 14, 1887, defendants Charlotte Miller and Henry Miller, filed their answer and plea in reconvention in said suit No. 248, in and by which they averred that they were the owners of the following described parcel or portion of said Fort Brown reservation, to-wit:

"Beginning on the bank of the lake within the Fort Brown enclosure at the south-east corner of this the said Antonio Salinas labor; thence with the meanders of the said lake N. 76 degrees W. 150 varas, to the line of this survey or labor, being the part of same sold by said Miguel Salinas to Charles Stillman, being twelve acres now claimed by James Stillman; thence with said line N. 70 degrees W. 145 varas; thence south 88 degrees and 30 minutes W. 334 varas, to the east boundary of the labor of Dorotero Zumora, and the west boundary of this labor; thence with the dividing line of the aforesaid labor N. 13 degrees 66 varas to the military fence of Fort Brown; thence with the said military fence for the north boundary of this survey N. 66 degrees east 665, to an old labor, name unknown; thence with the dividing line of said labor for the east boundary of this survey, south 34 degrees 15 E. 56 varas, 31 degrees E. 70 varas, to the labor Luz R-ndeon continued with the dividing line of Luz Rendeon and this survey, south 6 degrees 45 minutes W. 350 varas to the place of beginning; containing within said Fort Brown enclosure about twenty-two (22) acres of land more or less."

And on July 13, 1887, the said R. D. Hinojosa filed his answer in said suit No. 248, in and by which he alleged that he was the
11 owner of the interest in said Fort Brown reservation inherited by said Vicente Salinas from his ancestor Miguel Salinas. And on July 12, 1887, the said R. D. Hinojosa filed his answer in said suit No. 248, in and by which he alleged that he was the owner of the interest in said Fort Brown reservation inherited by said Vicente Salinas from his ancestor Miguel Salinas. And on Jule 12,

1887, the said Francisco Yturria, Matt Gerhard, Andrea Salinas and Felicita Salinas, filed their joint answer and plea in reconvention in said suit No. 248, in and by which they claimed that they were the owners of undivided portions of twenty-two and one-half (22½) acres of the land sued for therein by the heirs of Miguel Salinas.

And on July 13, 1887, the said Pedro G. Cavazos filed in said suit No. 248 his answer and plea in reconvention, alleging that he was the executor of the last will and testament of his mother, Maria Josefa Cavazos, deceased, and that her estate owned an undivided one-half, and defendant James Stillman owned the other undivided one-half of Fort Brown reservation. And this plaintiff avers that said Pedro G. Cavazos is now dead; that he never at any time qualified as such executor, and the said defendant Thomas Carson in said suit No. 248, fully represented said estate as the lawfully qualified administrator, with the will annexed and has constantly since then so represented said estate of Maria Josefa Cavazos.

And plaintiff further avers that on April 26th, 1887, the parties to said suit No. 248, made in writing and filed with the papers therein, a certain agreement showing common source of title of all the said parties to said Fort Brown reservation, a copy of which agreement is hereto attached, marked Exhibit C, and made a part of this bill.

IX.

Complaining further, the plaintiff respectfully represents unto your honors, and avers that, the aforesaid act of Congress appropriating the sum of $160,000.00 to pay for Fort Brown reservation and to extinguish the claims for its use and occupancy, provided that no part of that fund should be paid out until a complete title to said property should be vested in the United States, and that the full price for said lands and the rents and compensation for its use and occupation shall be paid directly to the owners of the property. The true intendment of said statute is: (1) That the United States should part with no portion of said fund, until a good, valid, absolute and indefeasible title to said Fort Brown reservation should be vested in the United States; and (2) that the full price for said reservation, including rents, should be paid directly to the real, *bona fide* owners of the property. Plaintiff avers that the pleadings in said suit No. 248 presented to the court for its examination, consideration and adjudication, a case of facts and law of the greatest intricacy, difficulty and complexity, requiring great skill, labor, care, patience, and perhaps years of litigation for its final solution; and without some compromise or agreement, whereby an indefeasible title to said property could be at once vested in the United States, there was great danger that the appropriation could not be made available, or would be ultimately consumed in litigation or in some manner lost to the owners of the property; and that in view of the great number of persons claiming an interest in said property, the nature of the facts and circumstances upon which alleged titles

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were based, and the ancient character of some of the alleged titles, and the frequent and complicated character of the transfers of said property during forty years, and the long standing and duration of the controversy between the United States and the owners and claimants of said property, and the great number of deaths and descents casts, and devises made, and the difficult and complicated questions of law arising upon the facts, it was absolutely impossible to make a valid title to said reservation, except through the judgment of this court, in said suit No. 248; and plaintiff avers that when the issues were fully made by the pleadings in said suit, the parties thereto and their attorneys and counsel at once became fully impressed with these difficulties, and the great importance and necessity of removing them, and became and were exceedingly desirous of agreeing upon some plan whereby a valid title to said reservation could be immediately vested in the United States in and by means of
13 a judgment of this court in said suit, followed by proper conveyance, with the view of having the real issues made by the pleadings settled after the title to the reservation should be vested in the United States, and the said appropriation secured to those parties who should thereafter be found entitled to receive the same.

X.

Plaintiff avers and shows unto your honors that on July 13, 1887, the said defendants James Stillman, Thomas Carson, administrator of the estate of Maria Josefa Cavazos, Henry Miller, Charlotte Miller, Matt Gerhard, Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Charles S. Dana and his wife Marie Grogan Dana, Francisco Yturria, Juan Salinas, H. E. Woodhouse and said B. O. Hicks and this plaintiff, independent executors of Stephen Powers, deceased, and others, parties to said suit No. 248, entered into a written agreement to the following effect, viz: (1) That in the trial of said suit the issues made by the pleadings therein should not be litigated nor adjudicated, but that a verdict and judgment should be rendered and entered therein, vesting the complete title to said Fort Brown reservation and all money owing by the United States, in said defendants, James Stillman and Thomas Carson, administrator with the will annexed of Maria Josefa Cavazos. (2) That upon procuring such verdict and judgment, the said Stillman and Carson should make the appropriate deed of conveyance, vesting a good and valid title in and to said land and the rents in the Government of the United States, and a warrant should be procured and obtained from the Secretary of War upon the Treasurer of the United States, for the said fund appropriated as aforesaid of $160,000.00, and $20,000.00 out of said fund should be immediately paid to certain agents at Washington, D. C., for services in procuring said appropriation, and that the balance of said fund ($140,000,00) should without delay be deposited in the bank of Ball, Hutchings & Co., of the city of Galveston, Texas, to the credit of Messrs. William P. Ballinger, T. N. Wall

and David B. Culberson, arbitrators, selected in and by said agreement for the purposes in said agreement and to the effect hereinafter set out. (3) That the parties to said suit by said written agree-
14 ment, submitted their several respective claims and rights, with certain exceptions therein stated, to said property and fund of $160,000.00, and the avails thereof, to the arbitration, determination and award of said Ballinger, Wall and Culberson, or any two of them, which should be final and conclusive of all such claims and rights and the issues made by the pleadings in said suit No. 248, and that upon the decision of said arbitrators, the said fund, less certain expenses in said agreement provided for, should be immediately paid by the arbitrators to the prevailing parties, according to their respective rights as found and determined by the decision and award. (4) It was provided in said agreement that if either or any of said arbitrators should refuse or fail to act others should be appointed in the manner therein stated. A copy of said agreement is hereto attached, marked Exhibit "D" and made part of this bill.

XI.

Plaintiff further avers that on July 14, 1887, pursuant to the agreement set up and pleaded in the section of this bill next preceding, a formal trial of said suit No. 248, was had in this court; that on said trial no evidence was offered upon the issues raised in the pleadings in regard to the respective rights and claims of the said parties to the suit, and the same were not in said trial contested or litigated, but by the consent of parties, and in accordance with and in conformity to said agreement a verdict was rendered in said suit in the words and figures following, to wit:

"HEIRS OF MIGUEL SALINAS
vs.
WM. L. KELLOGG ET AL. } No. 248.

We the jury find for the defendants in reconvention, James Stillman and Thomas Carson, administrator of Maria Josefa Cavazos, deceased, in the proportion of one undivided half each the property claimed by their pleas in reconvention herein.

FRANK LUSENA, *Foreman.*

Brownsville, Texas, Cameron county, July 14, 1887."

15 And said verdict was received by the court and filed with the papers in the cause; and the court then and there, by consent of parties, and in accordance with, and conformity to said agreement, made and entered a judgment in said suit No. 248, in the words and figures following, towit:

"HEIRS OF MIGUEL SALINAS
versus
WILLIAM KELLOGG ET AL. } No. 248.

On this day this cause came on to be heard, and the plaintiffs, Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, and Juan Salinas came not either in person or by attorney, and thereupon the cause was heard upon the pleas in reconvention of James Stillman, Pedro G. Cavazos, Thomas Carson, administrator with the will annexed of Maria Josefa Cavazos, H. E. Woodhouse, B. O. Hicks, guardian of the estate of Francis E. Powers, a minor, Annette P. Hicks, and her husband B. O. Hicks, Agnes A. Brown and her husband James A. Brown, Kate M. Combe and her husband Charles B. Combe, Marie Grogan Dana and her husband Charles S. Dana, B. O. Hicks and Charles B. Combes, executors of Stephen Powers, deceased, R. D. Hinojosa, Francisco Yturria, Matt Gerhard, Andrea Salinas, Felicita Salinas, Mrs. Charlotte Miller, Henry Miller, who appeared by their respective attorneys, and the United States by Rudolph Kleburg, Esq., her attorney, and William L. Kellogg by his attorney, and announced themselves ready for trial. And thereupon came a jury of twelve good and lawful men of the western district of Texas, to-wit: (1) Frank Lusena, (2) George Turner, (3) Alexander Stigger, (4) Martin Hanson, (5) Valentin Gavito, (6) Aaron Turk, (7) John T. Criss, (8) Jas. Connor, (9) Jacob Porter, (10) Sam A. Belden, (11) Gustave Schulz, and (12) Peter Simmons, who, being duly elected, tried, empanelled and sworn to try this cause and who having heard the pleadings, evidence, argu-
16 ment of counsel and charge of the court, returned into open court the following verdict, towit:

'HEIRS OF MIGUEL SALINAS
vs.
WILLIAM KELLOGG ET ALS. } No. 248.

We the jury find for the defendants in reconvention, James Stillman and Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, in the proportion of one undiveded half each, the property claimed by their pleas in reconvention herein.

(Signed) FRANK LUSENA, *Foreman.*

Brownsville, Texas, Cameron county, July 14, 1887.'

Whereupon it is considered by the court that the plaintiffs, Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, and Juan Salinas, take nothing by their suit and go hence without day, and that the said reconvening defendants, Pedro G.

Cavazos, H. E. Woodhouse, Maria Grogan Dana and her husband Charles S. Dana, B. O. Hicks, guardian of the estate of Francis E. Powers, B. O. Hicks and Charles B. Combe, executors of Stephen Powers, deceased, Annette P. Hicks and her husband B. O. Hicks, Agnes A. Brown and her husband James A. Brown, Katie M. Combe and her husband Charles B. Combe, Mrs. Charlotte Miller, Henry Miller, Francisco Yturria, R. D. Hinojosa, Andrea Salinas, Felicita Salinas, and Matt Gerhard take nothing by their pleas in reconvention herein, and that they go hence without day.

It is further ordered, adjudged and decreed that James Stillman and Thomas Carson, administrator of the estate of Maria Josefa Cavazos, have and recover in equal moi-ties the following described property: Fort Brown property, which is now described as follows:

'Beginning at a point on the left bank of the Rio Grande river adjoining the city of Brownsville where a line the center
17 of (14th) Fourteenth street of said city, moving southwardly, strikes the said river; thence north (57:25) degrees east on a line moving (30) feet west of the quartermaster's wall now there standing (2000) two thousand feet to the center of Monroe street in said city, intersecting the city limits of Brownsville; thence south (61 degrees) east (3450) three thousand four hundred and fifty feet to a mesquite post set for a corner; thence south (30 degrees) east (950) nine hundred and fifty feet to low water mark of the river; thence up the said river at low water mark as the same winds and turns about (15000) fifteen thousand feet to the place of beginning, containing about 358 8–10 acres of land, be the same more or less. The whole thereof being now and for many years past in the actual and exclusive possession and occupation of the United States as a military reservation.'

It is further ordered, adjudged and decreed that all right, title and interest in and to the foregoing premises and property be divested from and out of H. E. Woodhouse, the estate of Francis E. Powers, B. O. Hicks, guardian aforesaid, B. O. Hicks and Charles B. Combe, executors aforesaid, Marie Grogan Dana and her husband Charles S. Dana, Annette P. Hicks and her husband B. O. Hicks, Katie M. Combe and her husband Charles B. Combe, Agnes A. Brown and her husband James A. Brown, Mrs. Charlotte Miller, Henry Miller, Pedro G. Cavazos, Francisco Yturria, Matt Gerhard, Vicente Salinas, Juan Salinas, R. D. Hinojosa, Leocardio Salinas, Antonio Salinas, Bernardo Salinas, Higinio Salinas, Jose Maria Salinas, Vicente Salinas, Juan Salinas, William L. Kellogg, and the United States, and vested in the said James Stillman and Thomas Carson, as administrator with the will annexed of Maria Josefa Cavazos, in equal moi-ties. It is further ordered, adjudged and decreed that said defendants James Stillman and Thomas Carson, administrator, etc., as aforesaid, are also well entitled to have and recover all rents, issues and profits, interest, claims and dues for use and occupation
18 of said premises from the year 1846, down to this day. The said defendants are also to pay to the officers of this court all costs and fees incurred in this action."

A certified copy of said judgment is hereto attached, marked Exhibit " E," and made a part of this bill.

XII.

And plaintiff avers that the title to said lands and rents was by said judgment vested in said defendants James Stillman and Thomas Carson, administrator, in trust for the use and benefit of all the parties to said suit No. 248, and for the uses and purposes stipulated in the said agreement of date July 13, 1887, and for no other purposes whatever; and the said defendants Stillman and Carson, accepted the title to said property as trustees, and with the distinct understanding on the part of themselves and all other parties to said suit, and the court that rendered the judgment, that they should receive the same in trust for the benefit of all of said parties, and that they might be able to convey a good and valid title to the same to the Government of the United States, in order to, and thereby to secure from the United States the said fund of $160,000.00, and have it, less the $20,000.00 to be paid to agents at Washington, deposited to the credit of said arbitrators in the bank of Ball, Hutchings & Co., and there to remain until said arbitrators could determine the conflicting rights and claims of said parties to said property, and then to be paid to the persons found by said arbitrators to be the owners of said land and funds as aforesaid

And the plaintiff positively avers that the right and claims of said parties in and to said property were not adjudicated in and by said judgment, and there was no pretense upon the part of any party to said suit and judgment that any of said rights were adjudicated therein, but it was distinctly agreed and understood by all the parties thereto, that the title to said property was by said judgment placed in Stillman and Carson, in trust as aforesaid.

XIII.

Plaintiff avers that, on or about April 26, 1895, defendants Stillman and Carson, delivered to the Secretary of War of the United States their deed and release, which they had executed in due form of law, vesting in the United States of America a good and valid title to Fort Brown reservation, and releasing them from all claims for use and occupation thereof since May 1, 1846, pursuant to the agreement of July 13, 1887, and the judgment of July 14, 1887; copies of which deed and release are hereto attached, marked Exhibit " F " and " G " respectively, and made part of this bill; and in consideration of the execution and delivery of said deed and release and the agreement of July 13, 1887, and the rendition and entry of the said judgment of July 14, 1887, the United States of America, on said April 26, 1895, paid to defendants James Stillman and Thomas Carson, administrator as aforesaid, in cash, lawful money of the United States of America, the full sum of one

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hundred and sixty thousand dollars, which had been theretofore, by the Congress of the United States of America, appropriated to pay for Fort Brown reservation, and to extinguish all lawful claims for the use and occupation thereof. And plaintiff avers that Stillman and Carson received said sum of $160,000.00 in trust, and as trustees for and on behalf of all the claimants to said Fort Brown reservation, and who were parties to said suit No. 248, and for the ultimate use and benefit of all such of said claimants as should thereafter be ascertained, decided, determined or adjudged to be the owners of said Fort Brown reservation prior to and at the time the entry of said judgment, and the owners of said fund as the proceeds, avails and representative of said land, and compensation for the use and occupation thereof since May 1, 1846. But plaintiff avers that defendants Stillman and Carson fraudulently concealed from plaintiff and all the other claimants to said land and fund the fact that they had collected the same, and fraudulently appropriated and converted the whole of said fund of $160,000.00 to their own use and benefit; and they are now fraudulently using said judgment of July 14, 1887, by which the title of said land was vested in them in trust for the purpose of defrauding all the other claimants out of any benefit of said judgment, and for the purpose of defrauding them out of their interest in said fund and their claim and right to said land.

And defendants Stillman and Carson are conspiring with each other and with other persons for the purpose of fraudulently preventing and defeating a decision and settlement of the aforesaid conflicting claims to said land and funds, and a distribution thereof to the true owners, by arbitration as provided for by the agreement of the parties, or by this court or in any other manner; and to this end Stillman and Carson and their coadjutors and co-conspirators are fraudulently using the advantage obtained by them over the other claimants, by virtue of the fact that said judgment vested in them the title to said land and the claim for its use and occupation; and they are fraudulently using said judgment to deprive the true owners of said property out of their just and lawful compensation therefor, contrary to equity, and the act of Congress making said appropriation, and the lawful agreement of the parties. Mr. Ballinger, one of the arbitrators named, has departed this life, and Mr. Culberson, another of the arbitrators, has declined to act, and defendants Stillman and Carson decline to proceed to supply their places and to proceed with the arbitration, as provided for in the agreement; and they refuse to account for said trust fund of $160,000.00 and refuse to recognize the rights of the other claimants in said fund, under said agreement, and the judgment pursuant thereto entered; and they decline and refuse to deposit said fund, or any part thereof in the bank of Ball, Hutchings & Co., Galveston, Texas, as by said agreement they are bound to do; but they, Stillman and Carson, have secreted said fund and refuse to give to this plaintiff and the other claimants any information whatever concerning the same. Plaintiff signed the agreement of July

13, 1887, and consented to the judgment of July 14, 1887, because he had confidence in the honesty and integrity of Stillman and Carson, and believed that they would execute in good faith the trust thereby created; Stillman and Carson are, under and by virtue of the agreement and judgment, trustees of this court, and by virtue of the power and trust confided in them by the judgment of this court they obtained possession of the fund of $160,000.00, and are accountable to this court for the same; and they should be compelled under the pains and penalties of contempt to
21 speedily account for said fund and interest thereon from the day of its receipt by them.

XIV.

Complaining further, the plaintiff avers and represents unto your honors, that the conflicting claims to said land and said fund, and the various issues raised in regard thereto, by the record and pleadings in said suit No. 248, are now and remain wholly undetermined, undecided and unadjusted, except a certain admission in said agreement in favor of the estate of Stephen Powers, deceased, and Marie Grogan Dana and her husband Charles Dana, reference being thereto had for certainty, and for greater certainty as to all matters herein alleged as to the contents of the record in suit No. 248, reference is thereto made and to every part thereof. Plaintiff alleges that the estate of his testator, Stephen Powers, deceased, is entitled to one-half of said fund of $160,000.00, with interest thereon from April 26, 1895; and that all the persons as defendants herein are now claiming an interest in said fund proportionate to their respective claims to Fort Brown reservation, as shown by their respective pleadings in the former suit; he avers that Stillman and Carson have, by their wrongful acts, defeated the plan for arbitration, and have rendered necessary an application to this court for a continuation, completion and final adjudication of all the issues raised, and the matters partly litigated in the former suit on the law docket of this court, and for an adjudication of the respective claims to said fund.

XV.

Plaintiff avers that, as before stated, Rudolph Kleburg, United States district attorney, in and for the western district of Texas, by direction of the Attorney-General of the United States, appeared and intervened for the United States in said suit No. 248, and caused them to be made parties defendants to said suit; and said district attorney, for the United States, was a party to said agreement of July 13, 1887, though he did not sign the same, and for the United States, and for their benefit consented to the judgment
22 of July 14, 1887; and the United States have accepted the benefit of said agreement and judgment, and upon the faith thereof and pursuant thereto, paid over the $160,000.00. And it

was by virtue of the consent of the United States, by their distr attorney, that said judgment divested out of the United States title in and to said Fort Brown reservation and vested the same Stillman and Carson, it being the distinct understanding of all p ties to said suit, and their attorneys, solicitors and counsel, and t court, that the title to said property should be vested in said Sti man and Carson, in trust, as aforesaid, and for the purposes as afo said and none other. Plaintiff is informed and believes, and information alleges the fact to be, that the original of the agr ment of July 13, 1887, is not among the papers in the suit No. 2 but is now in the possession and under the control of defenda Stillman and Carson, their agents, solicitors and counsel.

XVI.

Plaintiff alleges and shows unto your honors that in said form suit No. 248, and in the execution of the agreement, the defenda James Stillman, was represented by his counsel and attorneys Jam R. Cox of New York, and Ballinger, Mott & Terry, a law firm co posed of W. P. Ballinger, M. F. Mott and J. W. Terry, of Galvest Texas; that said Ballinger is now dead and said Mott and Ter are attorneys and counsellors of this court and citizens of the St of Texas, and reside in the city of Galveston, Texas; and defe ant Carson is the duly and lawfully authorized agent of defenda Stillman in Texas, and represents their mutual interests in resi ing all efforts of the said claimants to compel an accounting them of said trust fund of $160,000.00. In the former suit and t agreement, this plaintiff and B. O. Hicks, as executors of the will said Stephen Powers, deceased, and the devisees and legatees of will, were represented by their attorneys and counsel, Wells Hicks, a law firm composed of J. B. Wells and B. O. Hicks, Brownsville, Texas; the said B. O. Hicks of said firm is now de and the said Wells is a citizen of the State of Texas and
23 sides at Brownsville. And in the former suit and agr ment Wells & Hicks also represented Matt Gerhard, Felic Salinas, Andrea Salinas, R. D. Hinojosa, Charles S. Dana and Ma Grogan Dana, Francisco Yturria. And Ballinger Mott & Ter represented Carson. And Henry Miller and Charlotte Miller we represented by their attorney, W. H. Mason, Esq., an attorney a counsellor of this court, and a citizen of the State of Texas, and sides in the city of San Antonio, Texas.

Plaintiff alleges that, so far as visible property is concerned, t defendant, Thomas Carson, is insolvent, and has no visible proper in this State, except such as is by law exempt from seizure and s under execution or attachment.

XVII.

To the end therefore, that the said defendants, James Stillm and Thomas Carson may, if they can, show why your orator shou

not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true and direct and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say—

1. Whether or not defendants James Stillman and Thomas Carson, or either of them, collected from the United States the aforesaid sum of $160,000.00 or any part thereof, and if so how much, when and what disposition they or either of them made of the same.

2. Whether or not the original of said agreement of July 13 1887, is in the possession or under the control of said defendants Stillman and Carson or either of them, their agents or attorneys, and whether or not they know where said original is, and in whose possession or under whose control it is, and where the same was the last time they saw it.

XVIII.

24 In consideration of the premises, plaintiff prays: (1.) That an interlocutory order be immediately made, ordering and directing the defendants, James Stillman and Thomas Carson, to pay over and deposit said fund of $160,000.00, into the registry of this court, or that a receiver be appointed to take charge of said fund, and that they be directed to pay over said fund to such receiver, as your honors may deem most advisable; and that obedience to such interlocutory order by defendants Stillman and Carson, be enforced by all the processes of contempt, writ of attachment, sequestration and writs of assistance. (2.) That all the aforesaid conflicting claims of said claimants, parties hereto, to said land and said fund, as the representative of said land be investigated, considered adjudicated, and settled in this suit by the court or by a master of the court. (3.) That defendants Stillman and Carson be enjoined from making fraudulent use of said judgment as aforesaid, and that they be compelled to account to this court for said sum of $160,000.00 with interest thereon from April 26, 1895 and that the trust created by the agreement of July 13, 1887 and the judgment of July 14, 1887, be enforced by the court. (4.) That on final hearing a decree be entered against defendants Stillman and Carson and the estate of Maria Josefa Cavazos and in favor of plaintiff as independent executor of Stephen Powers, deceased, for one-half of said fund, to wit: $80,000.00 and interest and costs, and that the same be paid over to him, and that defendants Stillman and Carson and the estate of Cavazos be required to pay the same and that the balance of said fund be, by decree of your honors, paid over to the claimants found by such decree to be entitled to the same. (5.) That Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, and in his own right, Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Felic-

ita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, Francisco Yturria, R. D. Hinojosa, H. E. Woodhouse, Henry Miller, Charlotte Miller, Mat Gerhard, Charles S. Dana, Marie Grogan Dana, and James Stillman, all be made parties defendants to this bill, and subpœna issue and be served on them by service on their
25 attorneys of record, or upon them in the districts where they may be found, requiring them to appear and answer this bill, but not on oath, sworn answers being hereby expressly waived, except that the defendants Carson and Stillman are required to answer on oath the interrogatories in said bill numbered 1 and 2; but an answer on oath as to the balance of said bill is waived. And plaintiff prays for further or different and general relief, such as the facts of this case and equity may entitle them to receive.

C. B. COMBE,
Independent Executor of the Estate of Stephen Powers, Deceased.

W. N. PARKS,
Solicitor for Plaintiff.
C. L. BATES,
Of Counsel for Plaintiff.

THE STATE OF TEXAS, }
Bexar County. }

Before me, the undersigned, Charles C. Smith, a notary public this day came personally C. B. Combe, the plaintiff in the foregoing bill who, after by me being duly sworn, stated on his said oath: That he is the plaintiff in the said bill and has read the same and is advised of the contents thereof, and that the allegations contained in said bill which refer to his own acts are true, and those allegations which refer to the acts of others he believes to be true.

C. B. COMBE.

Sworn to and subscribed before me the 5th day of June, 1897.

[SEAL.]

CHARLES C. SMITH,
Notary Public, Bexar County, Texas.

Be it remembered that on this 23rd day of March, A. D. 1882, there was begun and holden a regular term of the county court for the transaction of all probate business and any other matter that may lawfully be brought before the same.
26 Present: Hon. James M. Haynes, county judge, Adolphus Glaeveck, county clerk, S. A. Brito, sheriff, by John M. Haynes, deputy.

The court was opened by proclamation, whereupon no business appearing the court adjourned until Monday morning at 10 o'clock a. m.

THURSDAY MORNING AT 10 O'CLOCK A. M.,
March 30th, A. D. 1882.

The court met pursuant to adjournment.

Present: As before.

The court was opened by proclamation, whereupon the following proceedings were had.

EXHIBIT "A."

In the Matter of Proving the Last Will and Testament and the Codicil Thereto of STEPHEN POWERS, Late of Cameron county, Texas, Deceased. No. 112.

And now on this, the 30th day of March, A. D. 1882, being a regular day of this term for the transaction of probate matters, came on to be heard the application of Benjamin O. Hicks and Charles B. Combe, to probate the last will and testament and codicil thereto of Stephen Powers, late of Cameron county, in the State of Texas, deceased, and for letters testamentary upon said will and estate. And it appearing to the entire satisfaction of the court that due and proper notice and citation of said application had been given, as required by law in such cases, and there being no opposition thereto, and it being also shown to the entire satisfaction of the court that the said Stephen Powers died in the city of Brownsville, county of Cameron, State of Texas, on the 5th day of February, A. D. 1882, that at the time of his death and for many years last past continuously he had had his domicil in this said county of Cameron and State of Texas, that nearly all
27 of his estate, real and personal was situate and is in this said county of Cameron, that before his death he had made a last will and testament and codicil thereto, now here produced in open court and marked respectively "A" and "B" and filed herein for probate on the (11th) eleventh day of February A. D. 1882, that said will and the codicil thereto were both made, executed and published in all things according to the laws of this State of Texas. That at the time of making said will and the said codicil thereto, said Stephen Powers was of sound mind and disposing memory, and that the said applicants, Benjamin O. Hicks and Charles B. Combe were named in said will as the executors thereof and that by the terms of said will no other action is to be had in this court other than the due probate thereof and the filing of an inventory; it is therefore, in consideration of the premises now here by the court considered, adjudged and decreed, that the said will and the said codicil thereto be and the same are now here proved and established as the last will and testament, and the codicil thereto of the said Stephen Powers, deceased. It is also further ordered and adjudged that the said applicants Benjamin O. Hicks and Charles B. Com-e be and they are now hereby declared to be the executors of said will and estate, and that no further action is required of them except the

filing of an inventory and appraisement of said estate of said decedent in this court. And inasmuch as the said Benjamin O. Hicks as temporary administrator of said estate has filed in this court a full, true and correct inventory, appraisement and list of claims, which had been duly approved and recorded in the minutes of this court: It is therefore now here further ordered and adjudged that the same be and it now hereby is in all things approved, confirmed and adopted as the inventory and appraisement of this said estate, and that no further or other inventory and appraisement be or is required to be made or filed by said executors.

It is also further now here ordered and adjudged that the said last will and the said codicil thereto and the affidavits of James G. Browne, Frances N. Campbell and James B. Wells, Jr., taken
28 in open court, establishing the same be each and all fully recorded in the minutes of this court, and the same is accordingly now here done in words and figures as follows, towit:

THE STATE OF TEXAS, }
County of Cameron. }

In the name of God, Amen. I, Stephen Powers, of said State and County, considering the uncertainty of all earthly things, but being of sound mind and memory, do make, publish and decree this to be my last will and testament, that is to say: I will and bequeath out of any property of which I may die seized the sum of three hundred dollars to my niece, Mary Winchester, daughter of my sister Mary, deceased, now the wife of Mr. Keys, of N. York.

I further will and provide that all of my remaining property, of whatever description, of which I may die seized, shall descend to by,
and be inherited in equal shares and portions, my two daughters, Agnes Anastacia and Frances Euphemia Powers, and my two step daughters, Kate Maria Impy, wife of Dr. C. B. Combe, and Annette Pauline Impy, wife of B. O. Hicks, which they may enjoy, with God's blessing and mine to them, their heirs and assigns forever.

And I do further order and appoint that Kate Maria Combe, in said
connection with her A husband, be testamentary guardians of the personal estate of my daughter Agnes Anastacia, and I also further Pauline
order and appoint that [Annettee]* P. Hicks and her husband B. O. Hicks, be testamentary guardian of the personal estate of my daughter Frances Euphemia, provided that if either of the said Kate Maria or Annette Pauline should die before the said Agnes Anastacia or Frances Euphemia should become of age, then in that case the survivor of the two former, in connection with her respective husband, shall be the guardian of the persons and estates of the two latter.

[*Word enclosed in brackets erased in copy.]

And further provided that in case of the death of both of
29 the said Kate Maria and Annette Pauline before my two minor children arrive of age then in that case I appoint my late wife's sisters and the survivor of them to be such guardians as above provided.

And I further provide in case of my death that the Armoir now in my use be kept for my daughter Agnes Anastacia and the bureau for my daughter Frances Euphemia—my marble top washstand to Annette Pauline as a remembrance of their mother. I leave also my Colt's pistol to Dr. Combe and my Joe Manton fowling piece to B. O. Hicks.

And I also direct that any and all lands of which I may die seized be kept together until my youngest daughter arrives of age. And I further order and appoint that all my just debts be paid. I do further appoint Dr. C. B. Combe and B. O. Hicks executors of this my last will and testament with full powers to administer and liquidate the same.

I do further provide and will that no action be had in the probate court, in relation to my estate, than the probate of this my will and registry of the same, and the return of an inventory of my estate as provided by law, waiving in this behalf all security that would otherwise be required of them and of the testamentary guardians herein provided.

In witness whereof I do hereunto set my hand and scroll for seal this 29th day of July, 1869, in the presence of Joseph Kleiber and Nestor Maxan as witnesses.

STEPHEN POWERS.

In duplicate.

Witnesses:
JOSEPH KLEIBER,
NESTOR MAXAN.

(Endorsed:) *Mo.* 112. In the matter of the estate of Stephen Powers, deceased—Last will and testament "A," Filed for probate this the 11th day of February, A. D. 1882, Adolphis Glaevecke, clerk of the county court of Cameron county, Texas.

THE STATE OF TEXAS, }
County of Cameron. }

30 I, Stephen Powers, of said County and State, being desirous of making a codicil to my last will and testament made by me on the 29th day of July, A. D. 1869, being of sound mind and memory, do now here make, publish and declare this as my first and only codicil to my said last will and testament of said date, my said codicil as follows, towit:

I do now hereby give and bequeath unto my said step-daughter Annette Pauline Impy, wife of B. O. Hicks, of said County and State, the sum of one thousand dollars ($1,000).

And I do now hereby also give and bequeath unto my other step daughter Kate Maria Impy, wife of Dr. C. B. Combe, of said County and State, the sum of five hundred dollars ($500.00).

This said codicil and the terms thereof not to alter or in any manner change the terms of my said last will, only in so much as this is intended to and does create an addition to the bequests and devises to the said Annette Pauline Impy Hicks and the said Kate Maria Impy Combe in the amount of the respective sums herein named. In all and every other respect now hereby reaffirming my said will of July 29th, 1869, and making this codicil part thereof, and hereby expressly revoking every and all other wills and codicils whatsoever.

In witness whereof I do hereunto set my hand this the 31st day of December, A. D. 1881, in the presence of James G. Browne and James B. Wells, Jr., as witnesses, I signing in the presence of the said witnesses, and they and each of them signing at the same time as such witnesses, in my presence and at my request.

STEPHEN POWERS.

JAMES G. BROWNE,
JAMES B. WELLS, JR.

(Endorsed:) No. 112. In the matter of the estate of Stephen Powers, deceased—Codicil to last will and testament "B," Filed for probate this the 11th day of February, A. D. 1882,—Adolphus Glaevecke, clerk of the county court of Cameron county, Texas.

THE STATE OF TEXAS, }
County of Cameron. }

31 I, Joseph Webb, clerk of the county court in and for Cameron county, Texas, do hereby certify that the above and foregoing five (5) pages of writing contain a full, true and correct copy of the order of court probating will, and the last will and testament and codicil thereto of Stephen Powers, deceased, as the same appear and are duly entered of record upon the probate minutes of the county court of said Cameron county, Texas, in volume F, upon pages Nos. 451, 452, 453, 454 and 455.

Witness my hand and the seal of the county court of said county at office in the city of Brownsville, Texas, this the 18th day of May, A. D. 1897.

[SEAL.]

JOSEPH WEBB,
Clerk of the County Court, Cameron County, Texas.

EXHIBIT "B."

Oath of Executor.

THE STATE OF TEXAS, }
County of Cameron. }

I do solemnly swear, that I will well and truly perform the duties of executor of the estate of Stephen Powers, deceased, in accordance with law and the provisions of the last will, testament and codicil of said deceased.

B. O. HICKS, *Executor.*

Sworn to and subscribed before me this 7th day of April, A. D. 1882.

[L. S.] ADOLPHUS GLAEVECKE,
Clerk Co. Ct., Cam. Co., Tex.

(Endorsed:) No. 112. Estate of Stephen Powers, deceased—Oath Filed April 7th, A. D. 1882. Adolphus Glaevecke, clerk Co. Ct. Cam. Co. Tex.

THE STATE OF TEXAS, }
32 *County of Cameron.* }

I, Joseph Webb, clerk of the county court, in and for Cameron county, Texas, do hereby certify that the above and foregoing is a full, true and correct copy of the oath of B. O. Hicks as executor of the estate of Stephen Powers, deceased, together with all endorsements thereon, as taken from the original now on file in my office.

Witness my hand and the seal of the county court of said county, at office in the city of Brownsville, Texas, this the eighteenth (18th) day of May, A. D. 1897.

[SEAL.] JOSEPH WEBB,
Clerk of the County Court of Cameron County, Texas.

Oath of Executor.

THE STATE OF TEXAS, }
County of Cameron. }

I do solemnly swear that I will well and truly perform the duties of executor of the estate of Stephen Powers, deceased, in accordance with law and the provisions of the last will, testament and codicil of said deceased.

C. B. COMBE, *Executor.*

Sworn to and subscribed before me this 7th day of April, A. D. 1882.

[L. S.] ADOLPHUS GLAEVECKE,
Cl'k Co. Ct., Cam. Co., Tex.

(Endorsed:) No. 112. Estate of Stephen Powers, deceased. Oath Filed April 7th, A. D. 1882.—Adolphus Glaevecke, cl'k Co. Ct. Cam. Co. Tex.

THE STATE OF TEXAS, }
County of Cameron. }

I, Joseph Webb, clerk of the county court, in and for Cam-
33 eron county, Texas, do hereby certify that the above and foregoing is a full, true and correct copy of the oath of C. B. Combe, as executor of the estate of Stephen Powers, deceased, together with all endorsements thereon as taken from the original now on file in my office.

Witness my hand and the seal of the county clerk of
[SEAL.] said county, at office in the city of Brownsville, Texas, this the eighteenth (18th) day of May, A. D. 1897.

JOSEPH WEBB,
Clerk of the County Court of Cameron County, Texas.

EXHIBIT "C."

In U. S. Circuit Court, Western District of Texas, at Brownsville.

HEIRS OF MIGUEL SALINAS }
vs. } No. 248.
WILLIAM L. KELLOGG. }

In order to save time, expense, and unnecessary proof, the following facts as to the property in controversy in this cause are admitted to be true:

1. That the said premises, known as the Fort Brown reservation, consists of about three hundred and fifty acres of land, situated on the Rio Grande river in Cameron county, Texas, adjoining the city of Brownsville, and are a part of the Espiritu Santo grant, made by the Spanish government to Jose Salvador de la Garza, in 1781, and confirmed to him, his heirs and assigns, by act of the legislature of Texas, February 10, 1852, and patent issued by the State of Texas, dated June 21st, 1859.

2. By regular descent and devise, accompanied by possession, the middle third of said grant, embracing the city of Brownsville and the said Fort Brown reservation, became the property of Mrs.
34 Francisca Cavazos. In the year 1817, she sold and conveyed to Jose Miguel Paredes, ten sitios or square leagues off of the

eastern part of said middle third, by deed duly recorded in the county clerk's office of Cameron county, and Marie Grogan Dana, and the heirs of and devisees of the late Stephen Powers, deceased, are now the owners in fee simple of said eastern part of said middle third so sold and conveyed to Jose Miguel Paredes.

3. That the western part of said middle third of said Espiritu Santo grant, consisting of a fraction over nine square leagues (with the exception of what is known as the Miguel Salinas labor or claim, the title to which is in dispute) became the property of Maria Josefa Cavazos, by devise from the said Francisca Cavazos, who died in 1835.

4. That there are thirty-four and — one-hundredths (34.01) acres of the said Miguel Salinas labor or claim, within the limits of the said Fort Brown reservation, to which the parties hereto assert claims to title which are in conflict with one another.

For the purpose of deraigning title from common source, it is agreed that Mrs. Francisca Cavazos had title in fee simple to the same on the 19th day of September, 1833.

(Signed) THOMAS CARSON,
Adm'r of Est. M. J. Cavazos, Dec'd.
BALLINGER, MOTT & TERRY,
Attorneys for James Stillman.
WELLS & HICKS,
Attorneys for Heirs of S. Powers and Dana and Wife.
WELLS & HICKS,
Attorneys for B. O. Hicks and C. B. Combe,
Executors of S. Powers, Dec'd.
WELLS & HICKS,
Attorneys for B. O. Hicks, Guardian of Frances E. Powers.
WELLS & HICKS,
Attorneys for F. Yturria, M. Gerhard,
Andrea Salinas, and Felicita Salinas.
W. H. MASON, *Attorney for Charlotte Miller.*
JAS. R. COX, *Att'y for Pedro G. Cavazos.*

Exhibit D.

Agreement, Made This Thirteenth Day of July, 1887, *Between and Among Certain Reconvening Defendants in This Cause.*

"United States Circuit Court, Western District of Texas.

35 "Heirs of Miguel Salinas, H. E. Woodhouse, et als.
versus
Wm. L. Kellog, James Stillman, P. G. Cavazos, Thomas Carson, Administrator, and Others, Defendants,"

which is likely to be called and tried in said court tomorrow, and in which defendants are herein represented by their respective attorneys, witnesseth:

That whereas in March, 1885, the Congress of the United States made an appropriation of the sum of one hundred and sixty thousand dollars ($160,000.00) to get a good clear title, free of all arrears to the property known as Fort Brown; which property and the title thereof are in litigation in this suit. And it is apprehended unless in this court and by the judgment thereof a perfect title can be adjudged to certain of the parties, so as to meet the requirements of the Washington authorities, there is great danger of losing the said appropriation altogether. And whereas this court will not last further than this week, and there is little probability of all parties to this agreement, who claim the title to the whole of the property and the said money, working out to a complete and accurate adjudication by the judgment of this court, to be based on the verdict of the inevitable jury, all the rights of each party hereto who claim fractional interest in the said property, and it is therefore primarily desirable and necessary to have such a verdict and judgment in this action as will be attended with no complications, and be satisfactory to the department at Washington; and secondarily desirable to agree on a method of working out and ascertaining the exact rights and interests of each party hereto after the judgment, and the conveyance to the Government by the parties so adjudicated to be the owners, and the payment of said money therefor. And whereas the saume of twenty thousand dollars ($20,000) will then be due and owing to certain agents at Washington, who assisted in procuring the said appropriation who must first be paid from said fund when received. And whereas, there are certain parties to this action who claim interests in said property hostile and antagonistic to
36 the interests of the parties hereto, which claims we believe will fail on the trial now presently to come off. Now, therefore, it is mutually stipulated and agreed by the parties represented in this agreement as follows:

First. That they will unite in promoting and procuring a verdict and judgment in this cause to the effect that the whole of said property, and all dues appertaining thereto, *is* vested in and held by James Stillman of New York, and Thomas Carson, administrator with will annexed, of the late Mrs. Maria Josefa Cavazos, deceased, who are reconvening defendants in said action.

Second. That upon thus procuring such a verdict and judgment, the appropriate deed of conveyance is to be made by said owners to the Government and the usual warrant of the Secretary of War, upon the Treasurer of the United States for the said money procured and obtained, and the said sum of twenty thousand dollars ($20,000) so due as aforesaid at Washington, immediately paid from said fund by said arbitrators hereinafter named.

Third. That the balance of said fund, shall be deposited, without delay, in the banking house of Ball, Hutchings & Co., of the city of Galveston, to the credit of Messrs. Wm. P. Ballinger, T. N. Waul and David B. Culberson, arbitrators as hereinafter provided.

Fourth. That the parties hereto submit each and all manner of their several and respective claims to said property and the said fund, and the avails thereof shall be submitted to the arbitration and determination of the said Ballinger, Waul and Culberson as arbitrators, who (having signified their willingness to act) shall come to this city of Brownsville as soon as practicable, and probably in October next, and hear, try, arbitrate, award, judge and determine each and every the said respective claims and demands, and order the payment and distribution, and make distribution accordingly of said fund; and the award of any two of them to be binding and conclusive upon the said parties and the said fund.

Fifth. The parties hereto, at the request and direction of said arbitrators, to execute and deliver duly acknowledged, all such documents receipts or instruments of further assurance, necessary; or in the judg-
37 *mem*tn of said arbitrators, desirable to promote and complete the true intent, objects and purposes of this agreement.

Sixth. It is mutually agreed that the title and interest of so much, if any, of the Paredes tract of land, as is in and forms part of the said garrison property of Fort Brown, is held and owned by Mrs. Marie Grogan Dana and Charles Dana, of Boston, her husband, and by the heirs of Stephen Powers, late of Brownsville, deceased, and shall not be disputed; the only question as to the Paredes tract to be submitted to and determined by said arbitrators being whether any portion thereof is within the Fort Brown reservation; and if so, how much thereof and its value.

Seventh. Agreed, that the number of acres of the so-called Salinas claim, is twenty-one 48–100 acres, and that the question of title thereto, and whether of the parties hereto, represented by James B. Wells, or Wells & Hicks, or William H. Mason, their attorney; or H. E. Woodhouse, in person or by attorney represented, if either is entitled thereto, and if so in what proportion, and to be submitted to and decided by said arbitrators in this matter. With

these qualifications, all manner of claims to said property or said fund held or put forth by any of the parties herein represented, are to be presented, submitted and decided in this arbitration and award.

Eighth. Should the Government cemetery (within said Fort Brown grounds) or any part thereof be found to be within the Paredes tract, the money heretofore paid therefor by the United States to P. G. Cavazos, shall be considered and adjudicated upon in the award.

Ninth. All parties hereto mutually covenant and agree, irrevocably, each with the others, that the award so to be made, shall in all things be well and faithfully kept, performed, obeyed and maintained by each, fairly and in good faith; that said award shall be final and conclusive, binding upon each of said parties, their and each of their personal representatives, heirs and assigns.

Tenth. After the said award, immediately, the funds remaining in the hands of said arbitrators, shall be divided and paid out as follows:

1st. To defray all cost and expenses incurred in this behalf by said arbitrators; and also, an allowance of one thousand dol-
38 lars to each of them, as full compensation for their services.

2nd. All the remainder of said fund, shall be apportioned to and divided among the parties hereto according to their several and respective interests, as they shall be determined by said award.

3rd. Checks upon said banking house for each one's portion shall be drawn by said arbitrators, and delivered to each several party entitled thereto, or to his attorney herein representing him or them.

Eleventh. Should either or any of said arbitrators be unable or unwilling, or refuse to act as such in this matter, then a substitute is to be selected and agreed upon as follows:

Should it be General T. N. Waul who fails, his substitute shall be chosen and announced by note in writing, within twenty days after such failure, incapacity or refusal served by James B. Wells and B. O. Hicks, representing all the parties by them herein represented here, and delivered to either of the other arbitrators. Should it be W. P. Ballinger, who fails, then a substitute shall be announced by a similar note in writing, so delivered by M. F. Mott, to the other arbitrators, within twenty days, after such failure, incapacity or refusal. And should it be D. B. Culberson, who fails, then a substitute shall be announced by a similar note in writing, so delivered by William H. Mason to the other arbitrators, within twenty days after such failure, incapacity or refusal. And in case of neglect of either attorney above named, to deliver such a note in writing within twenty days as provided, then the two other and remaining arbitrators to cho-se a substitute of their own preference and who shall act with them, hear and decide, the same in all respects as if he was herein named, and chosen, instead of the above named arbitrator who fail. And in that case, the said two surviving arbitrators are to

be sole judges to decide of their own volition, as to whether or not it is proper for them to cho-se such substitute.

To all of which we hereto agree, and sign our names as representing our respective clients herein.

(Signed) JAMES R. COX,
Attorney and Counsel for James Stillman.
39 M. F. MOTT, *Attorney for James Stillman.*
THOMAS CARSON,
Administrator with the Will Annexed of the Estate of Maria Josefa Cavazos, Deceased.
HENRY MILLER,
By W. H. MASON, *His Attorney.*
MRS. CHARLOTTE MILLER,
By W. H. MASON, *Her Attorney.*
B. O. HICKS AND
C. B. COMBE,
Executors of the Will of Stephen Powers, Deceased,
By WELLS & HICKS, *Their Attorneys.*
B. O. HICKS,
Guardian of the Estate of Frances E. Powers,
By WELLS & HICKS, *Attorneys.*
KATE M. COMBE AND
C. B. COMBE,
By their attorneys, WELLS & HICKS.
B. O. HICKS AND
ANNETTE P. HICKS,
By WELLS & HICKS, *Their Attorneys.*
MAT GERHARD,
By WELLS & HICKS, *His Attorneys.*
FELICITA SALINAS,
By WELLS & HICKS, *Attorneys.*
ANDREA SALINAS,
By WELLS & HICKS, *Attorneys.*
R. D. HINOJOSA,
By WELLS & HICKS, *Attorneys.*
CHARLES S. DANA AND
MARIA GROGAN DANA, *His Wife,*
By JAMES B. WELLS AND
B. O. HICKS, *Attorneys.*
FRANCISCO YTURRIA.
JUAN SALINAS,
Pp. FRANCISCO YTURRIA,
His Attorney in Fact.
H. E. WOODHOUSE.
AGNES A. BROWNE AND
JAMES A. BROWNE, *Her Husband,*
By WELLS & HICKS, *Their Attorneys.*

THE STATE OF TEXAS, }
County of Cameron. }

Before E. H. Goodrich, a notary public in and for Cam
county, Texas, on this day personally appeared J. R. Cox, M
Mott, Thomas Carson, W. H. Mason, J. B. Wells (of the firm
Wells & Hicks), Francisco Yturria and H. E. Woodhouse, c
signing in their several capacities as attorneys and administrat
and personally known to me to be the persons whose names
subscribed to the foregoing instrument and acknowledged to
that they executed the same for the purposes and considerat
therein expressed.

Given under my hand and seal of office, this 15th day
40 July, A. D. 1887.

(Signed) E. H. GOODRICH,
[L. S.] *Notary Public, Cameron County, Texa*

EXHIBIT "B."

Minutes of U. S. circuit court of western district Texas, sitting
Brownsville, Thursday, July 14, 1887. Copy p. 53–55, ju
ment.

HEIRS OF MIGUEL SALINAS } No. 248.
vs.
WILLIAM L. KELLOGG ET ALS. }

On this day this cause came on to be heard, and the plainti
Leocardio Salinas, Aantonio Salinas, Melchor Salinas; Berna
Salinas; Higinio Salinas; Alejandro Salinas; Jose Maria Salin
Vicente Salinas and Juan Salinas, came not either in person or
attorney, and thereupon the cause was heard upon the pleas in
convention of James Stillman; Pedro G. Cavazos, Thomas Cars
administrator with the will annexed of Maria Josefa Cavazos, H.
Woodhouse, B. O. Hicks, guardian of the estate of Frances
Powers, a minor, Annette P. Hicks and her husband, B. O. Hic
Agnes A. Browne, and her husband, James A. Browne; Kate
Combe and her husband, Charles B. Combe, Marie Grogan Da
and her husband Charles S. Dana; B. O. Hicks and Charles
Combe, executors of Stephen Powers, deceased; R. D. Hinojosa, Fr
cisco Yturria; Mat Gerhard; Andrea Salinas, Felicita Salinas; M
Charlotte Miller; Henry Miller; who appeared by their respecti
attorneys, and The United States, by Rudolph Kleburg, Esq., i
attorney, and William L. Kellogg, by his attorney, and announc
themselves ready for trial.

And thereupon came a jury of twelve good and lawful men of t
western district of Texas, to wit: (1) Frank Lusena, (2) Geor
Turner, (3) Alexander Stigger, (4) Martin Hanson, (5) Valen
Gavito, (6) Aaron Turk, (7) John T. Criss, (8) Jas. Connor, (9) Jac

Porter, (10) Sam A. Belden, (11) Gustav Schulz and (12)
41 Peter Simmons, who being duly elected, tried, empanelled and sworn to try this cause, and who, having heard the pleadings, evidence, argument of counsel and charge of the court, returned into open court the following verdict, towit:

"HEIRS OF MIGUEL SALINAS
vs. } No. 248.
WILLIAM L. KELLOGG ET AL.

We, the jury, find for the defendants in reconvention, James Stillman and Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, in proportion of one undivided half each, the property claimed by their pleas in reconvention herein.

(Signed) FRANK LUSENA, *Foreman.*

Brownsville, Texas, Cameron county, July 14, 1887."

Wherefore it is considered by the court that the plaintiffs, Leocardio Salinas; Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas; Jose Maria Salinas, Vicente Salinas, and Juan Salinas, take nothing by their suit and go hence without day; and that the said reconvening defendants Pedro G. Cavazos, H. E. Woodhouse; Marie Grogan Dana and her husband Charles S. Dana; B. O. Hicks, guardian of the estate of Frances E. Powers; B. O. Hicks and Charles B. Combe, executors of Stephen Powers, deceased; Annette P. Hicks, and her husband, B. O. Hicks; Agnes A. Browne and her husband, James A. Browne; Kate M. Combe and her husband, Chas. B. Combe; Mrs. Charlotte Miller; Henry Miller, Francisco Yturria; R. D. Hinojosa, Andrea Salinas, Felicita Salinas, and Mat Gerhard, take nothing by their plea in reconvention herein, and that they go hence without day.

It is further ordered, adjudged and decreed that James Stillman and Thomas Carson, administrator of the estate of Maria Josefa Cavazos, have and recover in equal moities the following described property: Fort Brown property, which is now described as follows: Beginning at a point on the left bank of the Rio Grande river, adjoining the city of Brownsville, where a line in the center of (14th) Fourteenth street of said city, moving southwestwardly, strikes the said river. Thence north (57 25) degrees east, on a line moving thirty feet west of the quartermaster's wall, now there standing (2000) two thousand feet to the center of Monroe street in said city, intersecting the city limits of Brownsville. Thence south
42 (61 degrees) east (3450) three thousand four hundred and fifty feet to a mesquite post set for a corner. Thence south (30 degrees) east (950) nine hundred and fifty feet to low water mark of the river. Thence up the said river, at low water mark as the same winds and turns, about (15000) fifteen thousand feet to the place of beginning; containing about 358 8–10 acres of land, be the

same more or less; the whole thereof being now and for many yea
past in the actual and exclusive possession and occupation of th
United States as a military reservation. It is further ordered, a
judged and decreed that all right, title and interest in and to th
foregoing premises and property, be divested from and out of H.
Woodhouse, the estate of Frances E. Powers, a minor; the estate
Stephen Powers, deceased; Frances E. Powers, B. O. Hicks, guar
dian aforesaid, B. O. Hicks and Chas. B. Combe, executors aforesai
Marie Grogan Dana and her husband Chas. S. Dana, Annette
Hicks and her husband B. O. Hicks, Kate M. Combe and her hu
band Chas. B. Combe, Agnes A. Browne, and her husband, Jam
A. Browne; Mrs. Charlotte Miller, Henry Miller, Pedro G. Cavazo
Francisco Yturria, Mat Gerhard, Vicente Salinas, Juan Salina
R. D. Hinojosa, Leocradio Salinas, Antonio Salinas, Bernardo Sal
nas, Hignio Salinas, Jose Maria Salinas, Vicente Salinas, Juan Sal
nas, William L. Kellogg, and the United States, and vested in th
said James Stillman and Thomas Carson, as administrator with th
will annexed of Maria Josefa Cavazos, in equal moities.

It is further ordered, adjudged and decreed that the said defen
ants James Stillman and Thomas Carson, administrator, as afor
said, are also well entitled to have and recover all rents, issues an
profits, interest, claims and dues for use and occupation of sai
premises, from the year 1846 down to this day. The said defen
ants are also to pay to the officers of this court, all costs and fees i
curred in this action.

UNITED STATES OF AMERICA, }
Western District of Texas. }

43 I, D. H. Hart, clerk of the circuit court for the western di
trict of Texas, at Brownsville, do hereby certify that the for
going fifty-four (54) lines of printed matter *is* a full and correct cop
of the judgment in cause No. 248 as it appears of record on page
53/55 minutes of said court in my office.

Witness my hand and the seal of said court at Brownsville, Texa
this 19th day of May, A. D. 1897.

[SEAL.] D. H. HART,
Clerk U. S. Circuit Court, W. D. of Texas,
By CHAS. F. TIGHLMAN, *Deputy.*

EXHIBIT "F."

Know all men by these presents, that we, James Stillman, of th
city, county and State of New York, and Thomas Carson, of the cit
of Brownsville, Cameron county, Texas, as administrator, with th
will annexed of the estate of Maria Josefa Cavazos, formerly o
Matamoros, Mexico, deceased, for and in consideration of one hun
dred and sixty thousand dollars to us in hand paid by the Unite

States of America, have granted, sold and conveyed and by these presents do grant, sell and convey, unto the said United States of America, all that certain tract or parcel of land situate on the left bank of the Rio Grande river in Cameron county, State of Texas, adjoining the city of Brownsville, known as the "Fort Brown property," and more particularly described as follows: Beginning at a point on the left bank of the Rio Grande river, adjoining the city of Brownsville, where a line in the center of Fourteenth street in said city, moving southwestwardly, strikes the said river, thence north fifty-seven and twenty-five one-hundredths degrees east, on a line moving thirty feet west of the quartermaster's wall now there standing, two thousand feet to the center of Monroe street in said city, 44 intersecting the city limits of Brownsville. Thence south sixty-one degrees east three thousand four hundred and fifty feet to a mesquite post set for a corner. Thence south thirty degrees east nine hundred and fifty feet to low water mark of the river, thence up the said river at low water mark as the same winds and turns, about fifteen thousand feet to the place of beginning: containing about three hundred and fifty-eight and eight-tenths acres of land, be the same more or less; the whole thereof being now and for many years past in the actual and exclusive possession and occupation of the said United States of America as a military reservation, and being the same property referred to in chapter 360, page 507 of the United States Statutes at Large, passed during the second session of the Forty-eighth Congress.

To have and to hold the above described property together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said United States of America and its assigns forever.

And furthermore in consideration of the premises, we the said James Stillman and the said Thomas Carson as administrator as aforesaid, do hereby release and discharge the said United States of America from all claims and demands whatsoever for or in respect of the use and occupancy of the above described property, or for or on account of any rents, issues or profits thereof.

Witness our hands this fourteenth day of October, A. D. 1887.

JAMES STILLMAN. [SEAL.]
THOMAS CARSON, [SEAL.]
Adm'r with the Will Annexed of the Estate of
Maria Josefa Cavazos, Dec'd.

Signed in presence of:
EDWIN F. COREY.
ZELAH VAN LOAN.

Witnesses to the signature of Thomas Carson:
JOHN E. BEALL.
JOHN E. MITCHELL.
CHARLES W. HORNOD.
JAMES M. DURANT.

45 STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 14th day of October in the year one thousand eight hundred and eighty-seven, before me the undersigned Edwin F. Corey, a commissioner resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Texas to take acknowledgment of deeds, etc., to be used or recorded therein, personally appeared James Stillman, to me known to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

EDWIN F. COREY,
[L. S.] *Commissioner for the State of Texas,*
Office, 60 Wall Street, N. Y.

DISTRICT OF COLUMBIA, } ss:
City of Washington, }

Before me, John E. Beall, a commissioner of deeds for the State of Texas, in and for the District of Columbia, on this day personally appeared Thomas Carson, known to me to be one of the persons whose name is subscribed to the foregoing instrument and acknowledged to me that he, as administrator with the will annexed of the estate of Maria Josefa Cavazos, executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 18th day of October, A. D. 1887.

JOHN E. BEALL,
[L. S.] *A Commissioner of Deeds for the State of Texas in and for the District of Columbia.*

Filed for record at 4.30 o'clock p. m. April 11th, A. D. 1895,
46 and was duly recorded the same day.

JOSEPH WEBB, *Co. Clerk,*
By HOWARD MILLER, *Deputy.*

THE STATE OF TEXAS, }
County of Cameron. }

I, Joseph Webb, clerk of the county court in and for Cameron county, Texas, do hereby certify that the above and foregoing two and one-half pages are a full, true and correct copy of an instrument of record in my office, in Book "J," pp. 382, 383 & 384 record of deeds of Cameron county, Texas.

Witness my hand and seal of office this 18th day of May, A. D. 1897.

[SEAL.] JOSEPH WEBB,
Clerk County Court, Cameron County, Texas.

EXHIBIT G.

Know all men by these presents, that we, James Stillman, of the city, county and State of New York, and Thomas Carson, of the city of Brownsville, Cameron county, Texas, as administrator with the will annexed of Maria Josefa Cavazos, formerly of Matamoros, Mexico, deceased, for value received, do hereby release and discharge the United States of America from all claims and demands of every kind whatsoever which we may have against the said United States as owners of the Fort Brown military reservation, at Brownsville, Texas, for or on account of the use and occupation of the said reservation, or for or on account of any other cause or claim whatsoever from the year 1846 to the present time.

In witness whereof, we have hereunto set our hands and seals this 25th day of March one thousand eight hundred and ninety five.

JAMES STILLMAN, [SEAL.]
By JOHN A. GARVER, *Att'y.*
THOMAS CARSON, [SEAL.]
As Administrator of the Estate of
47 *Maria Josefa Cavazos, Deceased,*
By JOHN A. GARVER, *Att'y.*

Signed, sealed and delivered in presence of:
JOHN C. SCOFIELD.
A. N. THOMPSON.

DISTRICT OF COLUMBIA, }
City of Washington. }

I, A. N. Thompson, a notary public in and for said city and District, duly commissioned, qualified and acting, do hereby certify that on this 25th day of March, 1895, before me personally came John A. Garver, to me known, who being by me duly sworn, did depose and say that he resides in the city of New York, that he was the same person described in a certain power of attorney, dated October 18th, 1890, executed to him by James Stillman of the city of New York, and also the same person described in a certain power of substitution executed to him by the said Stillman on the same day, under a power duly executed to the said Stillman by Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, dated May 24th, 1889, that by virtue of the power thus conferred upon

him he had executed the foregoing release as attorney in fact of the said James Stillman and Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, and he thereupon acknowledged to me that he executed the said release as such attorney for the use and purposes therein expressed.

In witness whereof I hereunto affix my official seal the day and year above written.

[L. S.] A. N. THOMPSON,
Notary Public.

Filed for record at 4:30 o'clock, p. m., April 11th, A. D. 1895, and was duly recorded the same —.

JOSEPH WEBB, *County Clerk,*
By HOWARD MILLER, *Deputy.*

THE STATE OF TEXAS, }
County of Cameron. }

48 I, Joseph Webb, clerk of the county court, in and for Cameron county, Texas, do hereby certify that the above and foregoing is a full, true and correct copy of an instrument of record in my office in volume "J," pages 388 & 389, record of deeds of Cameron county, Texas.

Witness my hand and seal of office this eighteenth day of May, A. D. 1897.

JOSEPH WEBB,
[SEAL.] *Clerk County Court, Cameron County, Texas.*

Endorsed: No. 21, In equity. U. S. circuit court, western dist. Brownsville, Texas. C. B. Combe, independent ex'r, will of Stephen Powers, deceased, *v.* James Stillman and Thomas Carson, adm'r *et al.* Original bill. Ancillary suit. Filed June 14th, 1897. D. H. Hart, cl'k. By Chas. F. Tighlman, D.

49 No. 21.

Subpœna in Chancery.

The President of the United States to Thomas Carson, administrator with the bill annexed of the estate of Maria Josefa Cavazos, deceased, Greeting:

You are hereby commanded that laying all matters aside you cause an appearance to be entered for you before the honorable the United [*Btates*]* States circuit court for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in August, A. D. 1897, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, independent executor of the will of Stephen Powers, deceased, exhibited and filed

in the office of the said court on the 14th, day of June, A. D. 1897, against James Stillman, and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, hereunto [SEAL.] affixed, at Brownsville this 16th, day of June, A. D. 1897.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By CHAS. F. TILGHMAN, *Deputy.*

The defendant Thomas Carson [as]* administrator is required to enter his appearance in the above suit on or before the first Monday in August, 1897, otherwise the bill of complaint filed against him will be taken *pro confesso.*

D. H. HART, *Clerk,*
By CHAS. F. TILGHMAN, *Deputy.*

Interlineations made by request of Att'y W. N. Parks.

50 Endorsed: Marshal's return.—Came to hand this the 18th, day of June, A. D. 1897. Executed this the 19th, day of June, A. D. 1897, by delivering a true copy of this writ to the within named Thomas Carson in person. R. C. Ware, U. S. marshal, W. D. T. by John M. Hanyes, deputy. Filed the 19th, day of June, A. D. 1897. D. H. Hart, clerk, by Chas. F. Tilghman, deputy. No. 21. In equity. U. S. circuit court, western district of Texas, at Brownsville. C. B. Combe, independent executor, will of Stephen Powers, deceased, *vs.* James Stillman, *et al.* Subpœna in chancery. Issued June, 18th, A. D. 1897. Returnable July, 5", A. D. 1897. D. H. Hart, clerk, by Chas. F. Tilghman, deputy. Original to Thomas Carson, adm'r. Cameron county.

51 *Subpœna to James Stillman.*

U. S. Cir. Crt., Western District of Texas, at Brownsville, Texas.

C. B. COMBE, Ex'r,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Be it remembered that in the above stated cause, on June, 25th 1897, in open court at San Antonio, Texas upon application of the plaintiff it is ordered, adjudged and decreed, by the court that the

[* Words enclosed in brackets erased in copy.]

writ of subpœna do issue upon plaintiff's bill directed to defendant James Stillman, and shall be served by the marshal of the eastern district of Texas, upon M. F. Mott, of Galveston, Texas, the attorney of record of defendant James Stillman in said court at Brownsville, which shall be deemed good service.

It is further ordered, adjudged and decreed, that an alias subpœna do issue upon said bill directed to defendant James Stillman, and shall be served upon the said defendant James Stillman by the marshal for the southern district of the State of New York.

It is further ordered adjudged and decreed by the court that this order be entered upon the minutes of the court at San Antonio, Texas, and that the original of the order be then filed with the papers in the cause and entered upon the order book in said court at Brownsville, Texas.

It is further ordered, adjudged and decreed, by the court that the written application for this order be filed here and then filed with the papers in this case in the court at Brownsville, Texas.

Ordered, adjudged and decreed, in open court at San Antonio, Texas, this June, 25, 1897.

T. S. MAXEY, *Judge.*

No. 21. In equity. At Brownsville, Texas. C. B. Combe, ex'r *vs.* James Stillman, *et al.* Order for substituted service of subpœna, Filed June, 25th, 1897. D. H. Hart, clerk.

UNITED STATES OF AMERICA, }
Western District of Texas. }

I, D. H. Hart, clerk of the circuit court of the United States for the western district of Texas, hereby certify that the fore-
52 going one page and fifteen lines of writing contains a true and correct copy of the order of court as the same appears of record in this office.

Witness my hand and seal of said court, at office in
[SEAL.] the city of Brownsville, this 3d, day of July, A. D. 1897.

D. H. HART, *Clerk,*
By CHAS. F. TILGHMAN, *Deputy.*

53 No. 21.

Subpœna in Chancery.

The President of the United States to James Stillman, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at

Brownsville, in chancery sitting, on or before the first Monday in August, A. D. 1897, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on 14th day of June, 1897, against James Stillman and Thomas Carson, administrator, with the will annexed of the estate of Maria Josefa Cavazos, deceased, and to do further and to receive what shall then and there be considered in that behalf, and this you are not to omit under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, and the seal of said [SEAL.] circuit court hereto affixed, at Brownsville, this 3d day of July, 1897.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By CHAS. F. TILGHMAN, *Dep'y.*

The defendant James Stillman is required to enter his appearance in the above *suit* on or before the first Monday in August, 1897 otherwise the bill of complaint filed against him will be taken *pro confesso.*

D. H. HART, *Clerk*,
By CHAS. F. TILGHMAN, *Deputy.*

Endorsed: No. 21. U. S. circuit court. western district of Texas. At Brownsville. C. D. Combe, ex'r, *vs.* James Stillman, *et al.* Subpœna in chancery for James Stillman. Issued July 3d, 1897. D. H. Hart, clerk.

54 *Marshal's Return.*

Received in this office 12th, day of July, 1897, and executed on the 12th, day of July, 1897 by delivering to the within named defendant M. F. Mott in person a true copy of this subpœna.

J. S. WILLIAMS,
U. S. Marshal,
By E. T. DOROUGH, *Deputy.*

Filed July, 16th, 1897.

D. H. HART, *Clerk*,
By CHAS. F. TILGHMAN, *Deputy.*

Received this writ July 12th, 1897, and executed July 12th, by delivering a copy of this writ to M. F. Mott, at Galveston, Texas, in my district. Mr. Mott requests me to put in my return that he does not represent James Stillman.

J. S. WILLIAMS, *U. S. M.*,
By E. T. DOROUGH, *Deputy.*

55 No. 21.

Alias Subpœna in Chancery.

The President of the United States to James Stillman, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in August, A. D. 1897 then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on 14th day of June, 1897, against James Stillman and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the [SEAL.] said circuit court hereto affixed, at Brownsville, this 3d, day of July, 1897.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By CHAS. F. TILGHMAN, *Deputy.*

The defendant James Stillman is required to enter his appearance in the above suit on or be*fre* the first Monday in August, 1897 otherwise the bill of complaint filed against him will be taken *pro confesso.*

D. H. HART, *Clerk,*
By CHAS. F. TILGHMAN, *Deputy.*

Endorsed: No. 21. U. S. circuit court, western district of Texas, at Brownsville. C. B. Combe, ex'r. *vs.* James Stillman *et al.* Alias subpœna in chancery, for James Stillman. Issued July 3d, 1897. D. H. Hart, clerk.

56 U. S. Cir. C'rt, Western Dist. of Texas, at Brownsville, Texas.

C. B. COMBE, Ex'r,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Be it remembered that in the above stated cause, on June, 25th, 1897, in open court at San Antonio, Texas, upon application of the plaintiff: it is ordered, adjudged and decreed, by the court that the

writ of subpœna do issue upon the plaintiff's bill directed to defendant James Stillman, and shall be served by the marshal of the eastern district of Texas, upon M. F. Mott, of Galveston, Texas, the attorney of record of defendant James Stillman in said court at Brownsville, which shall be deemed good service. It is further ordered adjudged and decreed, that an alias subpœna do issue upon said bill directed to defendant James Stiliman, and shall be served upon the said defendant James Stillman by the marshal for the southern district of the State of New York. It is further ordered, adjudged and decreed, by the court that this order be entered upon the minutes of the court at San Antonio, Texas, and the original of the order be then filed with the papers in the cause and entered upon the order book in said court at Brownsville Texas. It is further ordered, adjudged and decreed, by the court that the written application for this order be filed here and then filed with the papers in this cause in the court at Brownsville Texas.

Ordered adjudged and decreed in open court at San Antonio this June 25th, 1897.

T. S. MAXEY, *Judge.*

Endorsed: No. 21. In equity, at Brownsville, Texas. C. B. Combe, ex'r. *v.* James Stillman *et al.* Order for substituted service of subpœna. Filed June, 25th, 1897. D. H. Hart, clerk.

UNITED STATES OF AMERICA,
Western District of Texas.

I, D. H. Hart, clerk of the circuit court of the United States for the western district of Texas, hereby certify that the one page and sixteen lines of writing hereto attached contains a true and correct copy of the order of court as the same appears of record in this office.

57 Witness my hand and seal of said court, at office in the city of Brownsville, this the 3d day of July, A. D. 1897.

[SEAL.]

D. H. HART, *Clerk,*
By CHAS. F. TILGHMAN, *Deputy.*

58 I hereby certify that on the 9th, day of July, 1897, at the city of New York, in my district, I served a copy of the within alias subpœna in chancery, and a certified copy of the order hereto annexed upon the within named defendant James Stillman, by *by* leaving a copy of each thereof at his usual place of abode, No. 7, East 40th street in said city, with William Reese, an adult person, who is a resident in the family of said defendant.

JOHN H. McCARTY,
U. S. Marshal, S. D. N. Y.

Dated New York, July, 9th, 1897.
J. E. D.

Filed July 18, 1897.

D. H. HART, *Clerk,*
By CHAS. F. TILGHMAN, *Deputy.*

59 *Petition for Substituted Service on Mott et al.*

C. B. COMBE, Ex'r, *vs.* JAMES STILLMAN ET AL. } No. 21. In Equity. Suit Pending in U. S. Cir. C'rt, Western District Texas at Brownsville, Texas.

To the judges of said court:

The petition of C. B. Combe, ex'r, plaintiff in the above cause respectfully showeth unto your honors that on June. 14, 1897, he filed his bill in the above stated cause against James Stillman and twenty other persons; that, as shown by the facts alleged in the bill herein this suit is ancillary to suit No. 248, on the law docket of this court and all the parties to this suit were parties to the former suit; that it is alleged in the bill that defendant James Stillman is a citizen and resident of the State of New York, and city of New York, and that in said former suit he was represented by his attorneys of record James R. Cox, of New York, and Ballinger, Mott, and Terry, a law firm composed of W. P. Ballinger, M. F. Mott, and J. W. Terry, of Galveston, Texas, and that Mr. Ballinger is deceased, and Messrs. Terry and Mott now reside in Galveston, Texas; and plaintiff in said bill prays that subpœna for defendant James Stillman and the other nonresident defendants be served upon their attorneys of record in said former suit, or upon them in the districts where they may be found: a copy of said bill is herewith submitted to the court.

Wherefore petitioner prays that an order be now made and entered directing, requiring, and authorizing that subpœna be issued upon said bill for defendant James Stillman and that it be served by the marshal of the eastern district of Texas, upon said M. F. Mott, and J. W. Terry, or either of them as the attorneys of record of defendant James Stillman, and that such service be deemed good service upon the said defendant James Stillman, or that such subpœna be served by the marshal of the — district of the State of New York, upon the defendant James Stillman in person, or upon him and his said attorneys also, as the court may deem advisable and just.

60

W. N. PARKS,
C. L. BATES,
GEO. C. ALTGELT,
Att'ys for Pl't'ff.

Endorsed: U. S. cir. c'rt. Brownsville Tx. No. 21. In equity. C. B. Combe, ex'r. *vs.* James Stillman, *et al.* Petition for order for substituted service of process. Filed, June, 25th, 1897. D. H. Hart, clerk. Filed Brownsville July, 1, 1897. D. H. Hart, clerk, by C. F. Tilghman, deputy. 6:30 p. m.

61 *Order for Service.*

U. S. Cir. C'rt, Western Dist. of Texas, at Brownsville, Texas.

C. B. COMBE, Ex'r,
vs.
JAS. STILLMAN ET AL. } No. 21. In Equity.

Be it remembered that in the above stated cause, on June 25th, 1897, in open court at San Antonio, Texas upon application of the plaintiff: it is ordered, adjudged and decreed by the court that the writ of subpœna do issue upon plaintiff's bill directed to defendant James Stillman, and shall be served by the marshal of the eastern district of Texas, upon M. F. Mott, of Galveston, Texas, the attorney of record of the defendant James Stillman in said court at Brownsville, which shall be deemed good service. It is further ordered adjudged and decreed, that an alias subpœna do issue upon said bill directed to defendant James Stillman, and shall be served upon the said defendant James Stillman, by the marshal for the southern district of the State of New York. It is further ordered, adjudged and decreed by the court that this order be entered upon the minutes of the court at San Antonio, Texas, and that the original of the order be there filed with the papers in the cause and entered upon the order book in said court at Brownsville, Texas.

It is further ordered, adjudged and decreed, by the court that the written application for this order be filed here and then filed with the papers in this cause in the court at Brownsville, Texas. Ordered, adjudged and decreed, in open court at San Antonio, Texas, this June, 25th, 1897.

T. S. MAXEY, *Judge.*

Endorsement: No. 21. In equity, at Brownsville, Texas. C. B. Combe, ex'r *vs.* James Stillman, *et al.* Order for substituted service of subpœna. Filed June, 25, 1897. D. H. Hart, clerk.

62 *Request for Subpœna for Carson.*

U. S. Circuit Court, Western District of Texas, at Brownsville, Texas.

C. B. COMBE, Independent Executor of the Last Will and Testament of Stephen Powers, Deceased,
vs.
JAMES STILLMAN and THOMAS CARSON, Administrator with the Will Annexed of the Estate of Maria Josefa Cavazos, Deceased.
No. 21. In Equity.

To the clerk of said court:

Please issue a subpœna in said cause for Thomas Carson, administrator, with the will annexed of the estate of Maria Josefa Cavazos, deceased, defendant, returnable to August rules, 1897.

W. N. PARKS,
C. L. BATES,
Solicitor and Counsel for Plaintiffs.

Endorsed: No. 21. In equity. U. S. cir. cr't. west. district Brownsville Texas. C. B. Combe, independent ex'r will of Stephen Powers, dec'd. *vs.* James Stillman and Thomas Carson, administrator, *et al.* Filed June, 16th, 1897, at 5:00 p. m. D. H. Hart, clerk, by Chas. F. Tilghman, deputy.

Subpœna for Thomas Carson, administrator, made out June, 16th, but not issued to marshal until 18th, d'y not presenting himself at office until that date, and no deposit for costs being made by attorney as required by law of May, 28th, 1896. Costs paid June 19th 1897. D. H. Hart, clerk, by Chas. F. Tilghman, deputy.

63 U. S. Circuit Court, Western District of Texas, at Brownsville, Texas.

C. B. COMBE, Independent Executor of the Last Will and Testament of Stephen Powers, Deceased,
vs.
JAMES STILLMAN and THOMAS CARSON, Administrators with the Will Annexed of the Estate of Maria Josefa Cavazos, Deceased.
No. 21. In Equity.

To the clerk of said court:

In the matter of the subpœna and alias subpœna for James Stillman, defendant, and M. F. Mott, his attorney of record, as ordered

by the judge of this court on the 25th, day of June, 1897, to be issued in this cause, please make the same returnable to August rules 1897, of this court.

W. N. PARKS,
C. L. BATES,
Solicitor and Counsel for C. B. Combe, Plaintiff.

President, Nat. City bank, New York, N. Y. and No. 52 Wall street New York, N. Y. and residence # 7 E. 40th street. These addresses were explained in my letter of July, 3/97, to the marshal of the southern district of New York, N. Y.

(Was in office until 8:10 p. m. July, 2d.) No deposit made until July, 3d, at 9:30 a. m., by F. J. Combe, in person, being deposit for marshal's costs.

D. H. HART, *Clerk*,
By C. F. TILGHMAN, *D'y.*

Subpœna issued for James Stillman to be served on M. F. Mott, of Galveston substituted service order of court. Alias subpœna issued to James Stillman New York, N. Y. Former sent to the marshal of eastern district of Texas, and latter to marshal of southern district of New York. Certified copies of order of court June, 25th, attached to each copy of subpœna.

D. H. HART, *Clerk*,
By CHAS. F. TILGHMAN, *Deputy.*

Endorsed: No. 21. In equity. U. S. circuit court. west-
64 ern district, at Brownsville, Texas. C. B. Combe, independent ex'r will of Stephen Powers dec'd. vs. James Stillman *et al.* Petition for subpœna. Filed, July, 2d, 1897, at 6:45 p. m. D. H. Hart clerk. By Chas. F. Tilghman, deputy.

65 *Two Orders for Subpœnas.*

Filed July 2nd, 1897.

U. S. Circuit Court, Western District of Texas, at Brownsville, Texas.

C. B. COMBE, Independent Executor of the Last Will and Testament of Stephen Powers, Deceased,
vs.
JAMES STILLMAN and THOMAS CARSON, Administrators with the Will Annexed of the Estate of Maria Josefa Cavazos, Deceased.
} No. 21. In Equity.

To the clerk of said court:

Please issue a subpœna in said cause for Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, defendant, returnable to August rules, 1897.

W. N. PARKS,
C. L. BATES,
Solicitors and Counsel for Plaintiff.

Subpœna for Thomas Carson, adm'r, made out June 16th, but not issued to marshal until 18th, deputy not presenting himself at office until that date, and no deposit for costs being made by attorney as required by law of May 28th, 1896. Costs paid June 19th, 1897.

D. H. HART, *Clerk*,
By CHARLES F. TIGHLMAN, *Deputy*.

Endorsed: No. 21 In equity. U. S. circuit court, western district of Texas, at Brownsville, Texas. C. B. Combe, inde-
66 pendent ex'r will of Stephen Powers, deceased, *versus* James Stillman and Thomas Carson, adm'r *et al.* Filed June 16th, 1897, at 5:50 p. m. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

U. S. Circuit Court, Western District of Texas, at Brownsville, Texas.

C. B. COMBE, Independent Executor of the Last Will and Testament of Stephen Powers, Deceased,
vs.
JAMES STILLMAN and THOMAS CARSON, Administrator with the Will Annexed of the Estate of Maria Josefa Cavazos, Deceased.
} No. 21. In Equity.

To the clerk of said court:

In the matter of the subpœna and alias subpœna for James Stillman, defendant, and M. F. Mott, his attorney of record, as ordered by the judge of this court on the 25th day of June, 1897, to be issued in this cause, please make the same returnable to August rules, 1897, of this court.

W. N. PARKS,
C. L. BATES,
Solicitors and Counsel for C. B. Combe, Plaintiff.

President National City bank, New York, N. Y. and No. 52 Wall street, New York, N. Y. and residence No. 7 E. 40th street.

These addresses were explained in my letter of July 3rd '97 to the marshal of the southern district of New York, N. Y. (Was in office until 8:10 p. m. July 2nd.) No deposit made until
67 July 3rd, at 9:30 a. m., by F. J. Combe, in person, being deposit for marshal's costs.

D. H. HART, *Clerk*,
By C. F. TIGHLMAN, *D'y.*

Subpœna issued for James Stillman, to be served on M. F. Mott of Galveston. Substituted service order of court. Alias subpœna issued to James Stillman, New York, N. Y. Former sent to the marshal of eastern district of Texas, and latter to marshal of southern district of New York. Certified copies of order of court June 25th attached to each copy of subpœna.

D. H. HART, *Clerk*,
By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21 In equity. U. S. circuit court, western district, at Brownsville Texas. C. B. Combe, independent ex'r will of Stephen Powers, dec'd, *vs.* James Stillman, *et al.* Filed July 2nd, 1897, at 6:45 p. m. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

68 *Affidavit of W. N. Parks as to Service of Notice of Motion.*

Filed July 15, 1897.

In the Circuit Court of the United States for the Western District of Texas, at Brownsville, Texas.

C. B. COMBE, Independent Executor of the Last Will of Stephen Powers, Deceased,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

W. N. Parks, being sworn, deposes and says:

That he is one of the plaintiff's solicitors in this case, and on June 25th, 1897, he deposited in the post office at Brownsville, Texas, two letters duly postpaid and registered, one directed to Mr. M. F. Mott, attorney at law at Galveston, Texas, and one addressed to Mr. J. W. Terry, attorney at law, at Galveston, Texas:

That in each of said letters there were enclosed a copy of the motion of plaintiff for the appointment of a receiver herein and order to pay over the one hundred and sixty thousand dollars mentioned in said motion, and also a notice that said motion would be presented to this court for hearing at Austin, Texas, on July 15th, 1897: and affiant afterwards received through the U. S. mail returned registered letters receipts for said two letters, which are hereto attached marked Exhibits A and B respectively, and made part hereof.

W. N. PARKS.

Subscribed and sworn to before me this 15th day of July, 1897.

[SEAL.] D. H. HART, *Clerk*,
By J. W. HANCOCK, *Deputy*.

Attached to this affidavit are two registry return receipts, as follows:

69 When the registered letter or parcel accompanying this card is delivered, the postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card without cover to the address below. A penalty of $300.00 is fixed by law for using this card for other than official business. Stamp, 1. (Date stamp obliterated.) Post Office Department. Official business. Post office at ——. Stamp here name of post office and date of delivery. Return to: Name of sender W. N. Oarks, street and number or post office box. Post office at Brownsville, Texas, county of —— State of —— Registry return receipt sent June 26, 1897. Reg. 1075 from post office at Brownsville, Texas. Reg. letter addressed to J. W. Terry, Galveston, Texas.

After obtaining receipt below the postmaster will mail this card without cover and without postage to address on the other side. Received the above described registered letter. (Sender's name on other side.) Sign on dotted lines to the right. J. W. Terry. When delivery is made to other than addressee, the name of both addressee and recipient must appear. Erase letter or parcel according to which is sent. Exhibit A.

When the registered letter or parcel accompanying this card is delivered, the postmaster will require signature to the recipient on the other side, also on his record of registered deliveries, and mail this card without cover to address below. A penalty of $300.00 is fixed by law for using this card for other than official business. Post Office Department. Official business. Post office at ——. Stamp here name of post office and date of delivery. Return to: Name of sender: W. N. Parks, street and number or post office box. Post office at Brownsville, Texas, county of —— State of —— Registry return receipt. Sent June 26th, 1897. Reg. No. 1074. from post office at Brownsville, Texas. Reg. letter addressed to M. F. Mott, Galveston, Texas. After obtaining receipt below, the postmaster will mail this card without cover and without postage
70 to address on other side. Received the above described registered letter (Sender's name on other side. Sign on dotted lines to the right. M. F. Mott. When delivery is made to other than addressee, the name of both addressee and recipient must appear. Erase letter or parcel according to which is sent. Exhibit B.

Endorsed: No. 21 In equity. C. B. Combe, independent executor of the last will of Stephen Powers, deceased, *versus* James Stillman and Thomas Carson, administrator, with the will annexed of Maria Josefa Cavazos, deceased, *et al.* Filed July 15th, 1897. D. H. Hart, clerk, by J. W. Hancock, deputy.

71 *Affidavit of C. L. Bates.*

In the United States Circuit Court for the Western District of Texas, at Brownsville, Texas.

C. B. COMBE, Executor, *vs.* JAMES STILLMAN ET AL. } No. 21. In Equity.

C. L. Bates, being duly sworn, deposes and says: That he is one of plaintiffs' counsel in this case, and that on June 18th, 1897, he deposited in the United States post office at San Antonio, Texas, a sealed letter, postpaid and duly registered, addressed to the defendant James Stillman, care of National City bank, New York city, New York State, containing a letter addressed to said Stillman, with the following enclosures, towit:

(1.) A copy of plaintiffs' original bill herein;

(2.) A copy of motion to require defendants Stillman and Carson to pay into the registry of this court, or into the hands of a receiver, the $160,000.00 collected by them from the United States Government as the price of Fort Brown military reservation;

(3.) A notice that the said motion will be presented to the court at Austin, Texas, on July 15, 1897.

Copies of said letter, motion and notice are hereto attached and marked Exhibits A, B and C, respectively, and made a part of this affidavit.

That affiant took from the postmaster at San Antonio a receipt for said registered letter addressed to defendant Stillman, and afterwards received through the United States mail, a return receipt for same, which are hereto attached, marked Exhibits D. and E and made a part of this affidavit.

That before depositing said registered letter in the mail addressed to said Stillman, affiant was informed by Mr. Thomas H. Franklin of San Antonio, Texas, that said Stillman is the president of said National City Bank of New York, and for that reason he sent said registered letter in care of said bank; and since sending said letter affiant has been informed by Mr. J. N. Brown, cashier of the Alamo National Bank, of San Antonio, Texas, that Stillman is the
72 president of said National City bank, and affiant on information and belief states the fact to be that Stillman is now and has for a long time past, been president of said National City Bank of New York, and that said registered letter was properly sent to him in care of said bank.

Affiant further states that on said June 18, 1897, he sent by registered letter a copy of said motion to Messrs. Shearman & Sterling, attorneys, at No. 44 Wall street, New York, who, affiant is informed, were then and are now the New York attorneys of defendant Stillman. *De*fiant took a receipt from the postmaster at San Antonio for the last named registered letter and afterwards received through the United States mail a return receipt for the same, which receipts are hereto attached and marked Exhibits F and G and made a part of this affidavit. Affiant further states that on or about the said 18th day of June, 1897, he deposited in the post office at San Antonio, Texas, a copy of said motion and notice in a letter post paid addressed to M. F. Mott, Esq., of Galveston, Texas, an attorney of record of James Stillman in this court, and in his letter to Mott requested him to acknowledge receipt of same, which he failed to do, but affiant believes that he did receive the same.

C. L. BATES.

Sworn to and subscribed before me this 15th day of July, A. D. 1897.

[SEAL.] D. H. HART, *Clerk.*

EXHIBIT A.

SAN ANTONIO, TEXAS, *June* 18, 1897.

Mr. James Stillman, New York.

DEAR SIR: Please find enclosed the following papers, viz: (1) Copy of bill No. 21 in equity in U. S. circuit court at Brownsville, Texas, filed by C. B. Combe, indep't ex'c'r against you and
73 others. (2) Motion to require you and Carson to pay into the registry of the court $160,000 collected by you from the U. S. Government as the price of Fort Brown military reservation. (3) A notice that said motion will be presented to the court at Austin, Texas, on July 15, 1897.

Respectfully yours,

C. L. BATES.

EXHIBIT B.

C. B. COMBE, Ex'r Stephen Powers, Dec., *vs.* JAMES STILLMAN and THOMAS CARSON, Adm'r Maria Josefa Cavazos, Dec., and Others.	No. —. In Equity. Suit Pending in the U. S. Circuit Court, Western Dist. of Texas, at Brownsville, Texas.

Now comes the plaintiff C. B. Combe, ex'r., and moves the court to make and enter an interlocutory decree herein directing defendants James Stillman and Thomas Carson, adm'r to pay into the registry of this court, or into the hands of a receiver, to be appointed by your honors, as they may deem advisable, the $16,000.00 collected by said defendant on April 26th, 1895, from the United States, and theretofore appropriated by act of Congress to pay for Fort Brown reservation, for the use and occupation thereof from May 1st, 1846, as set out in the original bill herein; and for grounds of this motion plaintiff relies upon all the facts stated in said bill.

W. N. PARKS,
C. L. BATES,
Solicitors and Counsel for Plaintiff.

EXHIBIT C.

To James Stillman and his attorneys of record in this court: *and*

You will take notice that on the 15th day of July, 1897,
74 in the U. S. circuit court room at Austin, Texas, we will present the attached application to said court for its decision and seek to obtain the order therein prayed for.

W. N. PARKS,
C. L. BATES,
Solicitors and Counsel for Plaintiff, C. B. Combe.

EXHIBIT D.

Letter / Parcel } 2546 Registered June 18, 1897.

Post office, SAN ANTONIO, TEXAS.

Received —— — 189– from C. L. Bates, a { let. / par. } addressed Jas. Stillman, New York, N. Y.

2157

J. M. GEORGE, *P. M.*,
Per A. G. RICHEY.

Big letter.

This space is reserved on counterpart for particulars connected with dispatch of registered piece.

EXHIBIT F.

Letter / Parcel } 2545 Registered June 18, 1897.

Post office rec'd, SAN ANTONIO, TEXAS.

Received —— — 189–, from C. L. Bates, a { let. / par. } addressed Jas. Stillman, New York city, N. Y.

2157

J. M. GEORGE, *P. M.*,
Per A. G. RICHEY.

This space is reserved on counterpart for particulars connected with dispatch of registered piece.

EXHIBIT E.

Registry Return Receipt. Sent June 18, 1897.

From post office at San Antonio, Texas.

Reg. No. 2546.

Reg. letter, addressed to James Stillman, post office at New
75 York, N. Y. 86,854.

After obtaining receipt below the post master will mail this card, without cover, and without postage, to address on the other side.

Received the above described registered letter
(Sender's name on other side)
Sign on dotted lines to the right

JAMES STILLMAN,
Nat. Oy. Bk.
A. NASH.

When delivery is made to other than addressee, the name of both addressee and recipient must appear.
* Erase letter or parcel according to which is sent.

(Reverse side.)

When the registered letter or parcel accompanying this card is delivered the post master will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card without cover to addressee below.
A penalty of $300. is fixed by law for using this card for other than official business.
(Post marked New York, June 22, 5. p. m.)

Post Office Department, official business. Post office at { Stamp here name of post office and date of delivery. }

Return to
Name of sender: C. L. Bates.
Street and number or post office box: Post office at San Antonio, county of Bexar, State of Texas.

EXHIBIT G.

Registry Return Receipt. Sent June 18, 1897.

From post office at San Antonio, Texas.

Reg. No. 2545.
Reg. letter, addressed to James Stillman, post office at New York, N. Y.
29,553.
76 After obtaining receipt below, the post master will mail this card, without cover and without postage, to address on the other side.

Received the above described registered letter.
(Sender's name on other side.)
Sign on dotted lines to the right.

JAMES STILLMAN,
By SHEARMAN & STERLING,
By C. A. LOUGHLIN.

When delivery is made to other than addressee, the name of both addressee and recipient must appear.
* Erase letter or parcel according to which is sent.

(Reverse side.)

When the registered letter or parcel accompanying this card is delivered, the post master will require signature to receipt on the other side, also on his record of registered deliveries and mail this card without cover to address below.

A penalty of $300. is fixed by law for using this card for other than official business.

(Post marked New York, June 22, 2:30 p. m.)

Post Office Department, official business. Post office at { Stamp here name of post office and date of delivery. }

Return to

Name of sender: C. L. Bates.

Street and number or post office box: Post office at San Antonio, county of Bexar, State of Texas.

(Endorsed:) No. 21 In equity, C. B. Combe, ex. *vs.* James Stillman, *et al.*, Affidavit of C. L. Bates, Filed July 15, 1897, D. H. Hart, clerk.

77 *Motion to Require Payment of Fund into Court.*

C. B. COMBE, Ex'r Stephen Powers, Dec., *vs.* JAMES STILLMAN and THOMAS Carson, Adm'r Maria Josefa Cavazos, Dec., and Others.	No. 21. In Equity. Suit Pending in the U. S. Circuit Court, Western Dist. of Texas, at Brownsville, Texas.

Now comes the plaintiff, C. B. Combe, ex'r plaintiff, and moves the court *ot* make and enter an interlocutory decree herein, directing the defendants James Stillman and Thomas Carson, adm'r, to pay into the registry of this court, or into the hands of a receiver to be appointed by your honors, as they may deem advisable, the $160.000.00 collected by said defendants on April, 26th, 1895, from the United States, and theretofore appropriated by act of Congress to pay for Fort Brown reservation, and for the use and occupation thereof from May 1, 1846, as set out in the original bill herein; and for injunction as prayed for in said bill, and for grounds of this motion plaintiff relies upon all the facts stated in said bill.

W. N. PARKS,
C. L. BATES,
Solicitor and Counsel for Plaintiff.

Endorsed: No. 21. In equity. U. S. circuit court, western district of Texas, sitting at Brownsville. C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased,

vs. James Stillman, and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased. *Motion* to make defendants pay money into the registry of the court, or appoint receiver. Filed June, 14th, 1897. D. H. Hart, clerk, by Chas. F. Tilghman, deputy.

78 *Reply of Thomas Carson to Writ to Show Cause.*

United States Circuit Court, Western District of Texas.

C. B. COMBE, as Executor of the Last Will and Testament of Stephen Powers, Deceased, Complainant,
against
THOMAS CARSON, as Administrator with the Will Annexed of the Estate of Maria Josefa Cavazos, Deceased, and Others, Defendants.

STATE OF TEXAS, *Cameron County,* } *ss:*

Thomas Carson, being duly sworn, says:

1. I am one of the defendants herein.

2. No part whatever of the $160,000 referred to in the bill of complaint herein, has ever at any time been received by me or been held under my control or direction. I attended in the city of Washington for nearly two years in attendance to collect the said sum from the Government of the United States, but did not succeed in so doing; and therefore, being unable to remain longer in Washington, I finally executed a power of attorney to one John A. Garver, of New York city, and a member of the firm of Shearman & Sterling, attorneys of the city of New York.

I could not alone either collect from, or receipt to the United States for the appropriation of sum named, because under the title in us and our deed to the Government, the money was necessarily payable to my co-defendant, James Stillman and myself jointly. The said John A. Garver was also at the time acting for James Stillman in the premises. I have endeavored several times
79 to obtain a settlement of my rights and distribution of the sum named among its owners in the premises and visited the city of New York for the purpose and remained there some time, but owing to the pending litigation of H. E. Woodhouse and others, I was wholly unable to do so, or to obtain from the said Garver any possession, control or disposition, of the sum, or any part of it, and have not been able to do so since, without any fault or omission in the premises on my part.

3. Out of the said amount appropriated $8,101.02 representing the taxes upon said Fort Brown property *was* actually paid at or about the time the appropriation was collected, as a necessary condition

precedent of obtaining the money; and I am informed and believe that more than $50,000 have been actually paid by Mr. Stillman for expenses connected with obtaining and protecting the appropriation, and collecting the money, to a large portion of which all of the parties hereto assented but did not contribute, or offer to contribute anything whatever to the large amount of necessary expense in the premises.

4. The appropriation as stated in the bill of complaint was made by Congress in March, 1885; but it was not collected till more than ten years after, and then only after very great trouble and expense, and after repeated investigations by various committees of Congress and various Secretaries of War and Attorneys-General. During none of this time did the complainant herein render any assistance whatever, nor did he ever render the slightest assistance, pecuniary or otherwise, in obtaining the appropriation.

5. I am very familiar with the facts relating to the ti-le to the said Fort Brown property, and, in my judgment, neither the complainant or his testator has ever had any title to any portion of the said premises.

6. That the true and rightful ownership of the estate of Maria Josefa Cavazos, of which I am the administrator, and the said James Stillman, to more than one-half of the said appropriation, has never been questioned or denied by any of the parties to this controversy, or any other person, so far as this affiant is informed and be-
80 lieves, and the only question, or dispute, in the premises, is as to remaining less than one-half thereof.

THOMAS CARSON.

Sworn to and subscribed before me this third day of July, A. D. 1897.

FLOYD L. FRISBIE,

[SEAL.] *Notary Public, County of Cameron, Texas.*

Pending in the United States Circuit Court for the Western District of Texas, at Brownsville, Texas.

COMBE, Adm'r,
vs.
STILLMAN ET AL.

And now comes Thomas Carson, administrator, &c., and replying to rule to show cause why receiver should not be appointed, or a certain alleged fund paid into court, and, limiting his appearance to this hearing and reserving and saving all right and benefit to file hereafter all necessary and proper pleadings in said cause, says:

That the court ought not to hear and to grant any order in said cause upon the motion as prayed for by complainant.

First.

Because the bill shows upon its face that all of the parties are not before the court, and that James Stillman is a non-resident of the State of Texas and a resident citizen of the State of New York, and is not within the jurisdiction of this court, and is not before the court by any character of service whatever, and of this, etc.

Second.

The bill shows that the original suit was an action at law, was finally determined and decided and its decree carried out, and the title to the property adjudicated to defendants Stillman and Carson, administrator (and the property then in controversy in said
81 action at law) has been since sold to the United States Government and the judgment of the court, therefore, has in all things been fully executed and there remains nothing else to be done in the premises, except at the instance of the Government it would be entitled to writs of restitution and writs of possession to place the United States Government in the possession of said property.

Third.

The agreement to arbitrate was not a part of said suit at law and never filed in said suit, and there was no fund in the court to adjudicate; the court knew nothing of such fund when it adjudicated the title, and no fund has ever been in the custody of this court.

Fourth.

The parties to said suit cannot be said to be still before the court, because the court had adjudicated in said suit all there was before the court for adjudication.

Fifth.

The agreement to arbitrate being a separate and independent undertaking, a breach thereof could only be remedied by an independent suit.

Sixth.

The bill shows upon its face that both the plaintiffs and defendant Carson, administrator, are citizens of the State of Texas, and the Federal court is without jurisdiction in this proceeding.

Seventh.

This court is entirely without power to appoint a receiver, as prayed, because it appears from complainants' bill that the money is not within the custody of the court; not subject to its process; not within reach of the process of the court, and is not within the State, and no proper process has been served upon the non-resident de-

fendants, and no custody or power of the court has been extende
over either the person or the money sought to be handled und
the orders and decrees of this court; all of which is more full
shown and appears by affidavit of Carson, administrato
82 hereto attached and made a part hereof.

Eighth.

The bill shows upon its face that it is entirely without equity, an
no reason is shown why this court should take jurisdiction of th
same, or attempt to administer the property.

Ninth.

It is not a suit to restrain payment of fund in possession of cour
it is not a suit to set aside the decree on the ground of fraud; it
not a judgment creditor's bill; it is not a suit affecting property i
possession of court; it is not a suit to restrain enforcement of judg
ment; it is not a suit to restrain one from occupying land to whic
in a former suit he has been held to have no title; it is not an a
cillary suit to decree judgment for valid liens and to direct sale of *sa*
of property to satisfy it; it is not a suit to enjoin garnishment proce
ings; it is not a suit to resist foreclosure proceedings; it is not
suit to secure restoration of property illegally paid out of court und
void judgment, and the alleged fund has never been in the actu
possession of the court, or under the control, so as to give it the juri
diction to decide upon conflicting claims thereto.

Tenth.

The bill shows that it is brought upon a cause of action arisin
subsequent to the judgment complained of, but in no way connecte
with the facts involved in the former suit, the former suit bein
brought to determine the title to real estate, and this suit bein
brought to determine the title to a certain fund over which th
court in the former suit had no jurisdiction, the fund not being i
existence at the time, and the court knew nothing of the plans an
motives of the parties to that suit, because the same were not di
closed by the record.

Eleventh.

That the said fund is not now in the possession of Thomas Carso
nor at any other time was the same had and received by him, o
ever has been held and possessed by him, or under his control, o
under his direction, and it is not within this district, nor i
83 it within the boundaries of the State of Texas.

Twelfth.

That it is apparent upon the face of said bill that it is in no wis
dependent upon the suit referred to therein, but is a separate an

independent bill without equity, and that there is no such diversity of citizenship of parties necessary to give this court jurisdiction.

Wherefore, for the reasons herein stated and for various and sundry other reasons which will appear to the court on the hearing of the application for a receiver, respondent prays that the court will refuse to grant any order in said cause looking to the appointment of a receiver, or requiring money to be paid into the custody of the court.

FRANKLIN & COBBS,
DUVAL WEST,
Solicitors for Defendant Thomas Carson, Administrator, and for Thomas Carson Individually.

Endorsed: No. 21 In equity, Combe, adm'r *vs.* Stillman, *et al.* Reply to writ to show cause why receiver should not be appointed. Filed July 15, 1897, D. H. Hart, clerk.

84 *Petition for Certified Records.*

C. B. COMBE, Ex'r, *vs.* JAMES STILLMAN ET AL. } No. 21. In Equity. Suit Pending in the U. S. Cir. C'rt, Western Dist. Texas, at Brownsville, Texas.

To the judges of said court:

The petition of C. B. Combe, independent executor of Stephen Powers, dec'd., and the plaintiff in the above state- cause, respectfully represents unto your honors, that on June, 14th, 1897, he filed his bill in said cause against James Stillman, Thomas Carson, administrator, *et al*, in which he alleged, in substance, among other matters, that on or about April, 26, 1895, defendants Stillman and Carson collected from the Government of the United States the sum of $160,000.00, the purchase money of Fort Brown military reservation, and compensation for its use and occupation; that said money is a trust fund in the hands of Stillman and Carson for the use and benefit of plaintiff, ex'r., and others mentioned in the bill; that Stillman and Carson have converted said fund for their own use; and prayer is made in said bill for the enforcement of said trust. That on June, 14, 1897, plaintiff filed in this suit an application for an interlocutory decree requiring said Stillman and Carson to pay the $160,000.00, into the registry of this court, or into the hands of a receiver, as your honors may direct; and notice has — given to Stillman and Carson that said application will be presented to the court for action thereon, at Austin, Texas, on July 15th, 1897.

That on the hearing of said application, and upon the final hearing of this cause, a material issue will be, whether or not the defendants Stillman and Carson did in fact collect and receive from the Government of the United States the said fund of $160,000.00 and

that — the hearing of such issue, a certified transcript of all the records of the Government of the United States in regard to the payment of said fund to Stillman and Carson, and their receipt and acquittance for the same, will be competent and material evidence for the plaintiff and other beneficiaries of said trust, and essential to the
85 ends of justice in this suit; and plaintiff is advised that such transcript of said records cannot be obtained by the plaintiff from the Government of the United States, except upon the certificate of this court that it (the transcript) is essential to the ends of justice.

That no effort is made in this suit to in any manner affect the rights and interests of the Government of the United States in Fort Brown military reservation, nor in regard to the payment of said fund to Stillman and Carson; but the bill filed herein fully recognizes the validity of the Government's title to the Fort Brown military reservation, and the validity of the payment of the $160,000.00 to Stillman and Carson.

Wherefore petition prays that this court may speedily certify to the proper departments of the Government at Washington that a certified transcript of said records *are* essential to the ends of justice in this cause, as evidence on behalf of plaintiff and others claiming an interest in said fund, and request- that same be furnished to plaintiff's counsel.

W. N. PARKS,
C. L. BATES,
GEO. C. ALTGELT,
Counsel for Plaintiff.

Endorsed: U. S. cir. c'rt. Brownsville, Texas. No. 21. In equity. C. B. Combe, ex'r. *vs.* Jas. Stillman, *et al.* Petition. Filed June 25, 1897. D. H. Hart clerk. W. N. Parks, C. L. Bates, Geo. C. Altgelt.

86 U. S. Cir. C'rt, Western Dist. Texas, at Brownsville, Texas.

C. B. COMBE, Ex'r,
vs.
JAS. STILLMAN ET AL. } No. 21. In Equity.

Be it remembered, that in the above stated cause, on June 25th, 1897, in open court at San Antonio, Texas, upon the application of the plaintiff: it is ordered, adjudged and decreed by the court, that it be certified, and the court doth hereby certify to the President of the United States, and to the Attorney General of the United States, and to the Secretary of War, and the Secretary of the Treasury of the United States that in this cause it is essential to the ends of justice that the plaintiff be immediately furnished by the Government with a certified transcript of all the records of the Government in regard to the payment by it to the defendants James

Stillman and Thomas Carson, adm'r of the sum of $160,000.00 as the purchase money of Fort Brown military reservation, at Brownsville, Cameron county, Texas, and for use and occupation thereof, and also a certified transcript of the receipt of said Stillman and Carson for said money. It is further ordered that this order be entered upon the minutes of the court at San Antonio, Texas, and a certified copy of same be furnished by the clerk of this court to plaintiff's counsel, and that the original of the order be then filed at Brownsville and entered upon the order book there. It is further ordered that the written application of plaintiff upon which this order is obtained be now filed, and then transmitted to Brownsville and filed with the papers in this cause. Ordered, adjudged, and decreed in open court at San Antonio, this June 25th, 1897.

T. S. MAXEY, *Judge.*

Endorsed: No. 21. In equity. Brownsville, Texas. C. B. Combe, ex'r. *v.* Jas. Stillman, *et al.* Order and certificate. Filed June 25, 1897. D. H. Hart, clerk.

87 U. S. Circuit Court, Brownsville, Texas.

C. B. COMBE, Ex'r,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Now comes the plaintiff by his counsel, and moves the court to enter an order herein requiring M. F. Mott, Esqr., of Galveston, and att'y, of record for defendants James Stillman, and Thomas Carson, in suit No. 248 on the law docket of this court, to immediately file with the clerk of this court the original of the agreement of July, 13th, 1887 mentioned in the plaintiff's bill.

Because said paper is material to the rights of the plaintiff and the other parties defendant to this suit.

W. N. PARKS,
C. L. BATES,
Counsel for the Plaintiff.

U. S. Circuit Court, Brownsville.

C. B. COMBE, Ex'r,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

C. L. Bates, being sworn deposes and says that he is informed by W. H. Mason, Esq., of San Antonio, that the original of the agreement of July 13th, 1887, mentioned in plaintiff's bill, is now in the possession of M. F. Mott, of Galveston.

Affiant was informed that both Mason and Mott were present when said agreement was executed, and signed same for their clients.

C. L. BATES.

Sworn to and subscribed this July, 16th, 1897.

[SEAL.]

D. H. HART,
Cl'k U. S. Courts.

Endorsed: No. 21. In equity. U. S. circuit court, Brownsville, Texas. C. B. Combe, ex'r. *vs.* James Stillman, *et al.* Motion by plaintiff for order to compel M. F. Mott, att'y, of record for defendants Stillman and Carson, to file original of agreement of July 13th, 1887. Filed July, 16, 1897. D. H. Hart, clerk.

88 C. B. COMBE, Executor of Stephen Powers, Deceased, *vs.* JAMES STILLMAN ET AL. } No. 21. In Equity. Suit Pending in the United States Circuit Court for the Western District of Texas, at Brownsville, Texas.

Be it remembered, that on this the 15th day of July, 1897, in open court at Austin Texas, came on to be heard the motion and application of plaintiff herein for the appointment of a receiver and for the issuance of a preliminary writ of jurisdiction upon plaintiff's bill, motion, proof of service of notice of said motion, the response of the defendant Carson, as administrator and individually, to said motion, and the record in suit No. 248 on the law docket of the said court at Brownsville; and defendant James Stillman not appearing, and the court having heard argument of counsel and being advised of all matters of face and of law arising upon said motion and application and of the response thereto, is of opinion that the court has jurisdiction of this cause as being a suit ancillary to said cause No. 248 on the law docket of this court, and is therefore of opinion that the same should be sustained:

It is therefore ordered, adjudged and decreed by the court that the said application of plaintiff, C. B. Combe, for the appointment of a receiver and for preliminary writs of injunction herein be and the same is hereby sustained.

It is further ordered, adjudged and decreed by the court that S. J. Brooks be and he is hereby appointed receiver in this cause, but before entering upon his duties he shall execute bond, with two good and sufficient sureties, in the penalty of one thousand dollars, to be hereafter increased according to circumstances, conditioned and payable according to law, said bond to be approved by the clerk of this court or any lawfully constituted deputy; and shall take and file in writing an oath that he will discharge his duties as receiver according to law and the direction of the court.

It is further ordered, adjudged and decreed by the court that the said S. J. Brooks, receiver, when he shall have qualified as hereinabove directed, be and he is hereby authorized to bring such suits as he may be advised by his counsel, and ordered by the
89 court, for the purpose of recovering the one hundred and sixty thousand dollars alleged in plaintiff's bill of complaint to have been collected from the Government of the United States as the purchase money and compensation for Fort Brown reservation and for the use and occupation thereof from the date of its seizure down to the time said money was paid over to said defendants.

It is further ordered, judgen and decreed by the court that the said Thomas Carson, in his own right and as administrator with will annexed of Maria Josefa Cavasos, and the said James Stillman, their agents attorneys solicitors and counsel be and they are hereby restrained and enjoined from using the judgement rendered on the 14th day of July, 1887 in suit No. 248, heirs of Migues Salinas *vs.* William Kellogg, *et al.*, on the law docket of this court at Brownsville, Texas, for the purpose of depriving the plaintiff and other defendants to this suit of their interest in said fund of one hundred and sixty thousand dollars, and from refusing to pay said fund into the hands of said receiver and from refusing to account to this court for the same.

It is further ordered, adjudged and decreed that preliminary writs of injunction do issue out of this court in accordance with the above order and be served on the defendant Carson, as administrator and individually, by the marshal of the western district of Texas, and upon the said defendant Stillman by the marshal of the southern district of the State of New York.

It is further ordered, adjudged and decreed that writ of execution in chancery do issue out of this court to the marshal of the western district of Texas, commanding him to serve this order upon the said defendant Carson, as administrator and individually, and also to the marshal of the southern district of the State of New York, commanding him to serve this order upon the said defendant James Stillman.

To all of which said order, judgement and decree the defendant Thomas Carson, administrator and individually, excepted and in open court prayed an appeal therefrom *the* the United States circuit court of appeals for the fifth circuit, sitting at New Orleans,
90 La., which appeal is hereby granted him individually and as such administrator.

And all further proceedings herein be stayed until the determination of this appeal, except the issuance and service of process.

Appeal bond is fixed at five hundred dollars.

It is further ordered that this order be entered on the minutes of the court at Austin and then transmitted to Brownsville for record there, which is hereby ordered to be done.

Ordered, adjudged and decreed in open court at Austin Texas, this July, 15th. 1897.

T. S. MAXEY, *Judge.*

#21. Equity. C. B. Combe ex't'r *c. t. a. v.* Jas. Stillman *et al.* Decree.

Endorsed: Decree. Entered at Austin division, July, 15, 1897. D. H. Hart, clerk. Entered at Brownsville division a-d filed July 23, 1897. No. 38. D. H. Hart, clerk, by Chas. F. Tilghman, deputy.

91 C. B. COMBE, Executor of Stephen Powers, Deceased,
vs.
JAMES STILLMAN ET AL.
No. 21. In Equity. Suit Pending in the United States Circuit Court for the Western District of Texas, at Brownsville, Texas.

The President of the United States of America to Thomas Carson, individually, Brownsville, Texas:

Whereas, on the 15th day of July, A. D. 1897, in the above entitled and numbered cause, the complainant, C. B. Combe, executor of Stephen Powers, deceased, has prayed for and obtained from the Honorable T. S. Maxey, United States district judge for the western district of Texas, his most gracious writ of injunction, restraining and enjoining Thomas Carson, of the city of Brownsville, Cameron county, Texas, in his own right and as administrator with the will annexed of Maria Josefa Cavazos and James Stillman, of the city of New York, State of New York, their agents, attorneys, solicitors and counsel, from using the judgement rendered on the 14th day of July, 1887, in suit No. 248, Heirs of Miguel Salinas *vs.* William Kellogg, *et al.*, on the law docket of this court at Brownsville, Texas, for the purpose of depriving the complainant and the other defendants to this suit of their interest in the fund of one hundred and sixty thousand ($160,000.00) dollars collected from the Government of the United States as the purchase money and compensation for Fort Brown reservation and for the use and occupation thereof from the date of its seizure down to the time said money was paid over to the said Stillman and Carson, and from refusing to pay said fund into the hands of S. J. Brooks, the receiver appointed herein, and from refusing to account to this court for the same:

Now, therefore we do strictly command, restrain and enjoin you the said Thomas Carson, individually, your agents, attorneys, solicitors and counsel, from using the said judgement rendered on the 14th day of July, A. D. 1887, in suit No. 248, Heirs of Miguel Salinas *vs.* William Kellogg *et al.*, on the law docket of the circuit court of the United States, at Brownsville, Texas, for the purpose of depriving the complainant and other defendants to this suit of
92 their interest to saod fund of one hundred and sixty thousand ($160,000.00) dollars, and from refusing to pay said fund into the hands of said receiver, and from refusing to account to this court for the same, under the pains and penalties which may fall upon you and each of you in case of disobedience.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of our said circuit court, at Brownsville, Texas, this 24th day of July, A. D. 1897.

[SEAL.] D. H. HART,
Clerk of the Circuit Court of the United States for the Fifth Circuit and Western District of Texas,
By CHAS. F. TILGHMAN, *Deputy.*

Endorsed: No. 21. In equity. In the circuit court of the United States in and for the western district of Texas, at Brownsville. C. B. Combe, executor of Stephen Powers, deceased, *vs.* James Stillman *et al.* Original writ of injunction to Thomas Carson, individually, Brownsville, Texas. Issued July, 24th, 1897, D. H. Hart, clerk. By Chas. F. Tilghman, deputy. Filed July, 26th, 1897, D. H. Hart, clerk, by Chas. F. Tilghman, deputy.

Marshal's Return.

Received this writ on the 24th, day of July, A. D. 1897, and I executed the same on the 24th day of July, A. D. 1897, at Brownsville, Texas, and in my district by delivering to the defendant, Thomas Carson in person, a true copy of this original writ of injunction to Thomas Carson, individually.

R. C. WARE,
U. S. Marshal for the Western District of Texas,
By JOHN M. HAYNES, *Deputy.*

93 C. B. COMBE, Executor of Stephen Powers, Deceased,
vs.
JAMES STILLMAN ET AL.

No. 21. In Equity. Suit Pending in the United States Circuit Court for the Western District of Texas, at Brownsville, Texas.

The President of the United States of America to Thomas Carson, as administrator with the will annexed of estate of Maria Josefa Cavazos:

Whereas, on the 15th day of July, A. D. 1897, in the above entitled and numbered cause, the complainant, C. B. Combe, executor of Stephen Powers, deceased, has prayed for and obtained from the Honorable T. S. Maxey, United States district judge for the western district of Texas, his most gracious writ of injunction, restraining and enjoining Thomas Carson, of the city of Brownsville, Cameron county, Texas, in his own right, and as administrator with the will annexed of Maria Josefa Cavazos, and James Stillman of the city of New York, State of New York, their agents, attorneys, solicitors and counsel, from using the judgement rendered on the 14th day of July, 1887, in suit No. 248, Heirs of Miguel Salinas,

versus William Kellogg, *et al.*, on the law docket of this court at Brownsville, Texas for the purpose of depriving the complainant and the other defendants to this suit of their interest in the fund of one hundred and sixty thousand ($160,000.00) dollars collected from the Government of the United States as the purchase money and compensation for Fort Brown reservation and for the use and occupation thereof from the date of its seizure down to the time said money was paid over to said Stillman and Carson, and from refusing to pay said fund into the hands of S. J. Brooks, the receiver appointed herein, and fro*m* refusing to account to this court for the same :

Now, therefore, we do strictly command, restrain and enjoin *yo* you, the said Thomas Carson as administrator with the will annexed of Maria Josefa Cavazos, your agents, attorneys, solicitors and counsel, from using the said judgement rendered on the 14th day of July, 1887, in suit No. 248, Heirs of Miguel Salinas, *versus* William Kellogg, *et al.*, on the law docket of the circuit court of the
94 United States at Brownsville, Texas, for the purpose of depriving the complainant and the other defendants to this suit to their interest in said fund of one hundred and sixty thousand ($160,000.00) dollars, and from refusing to pay said fund into the hands of said receiver, and from refusing to account to this court for the same, under the pains and penalties which may fall upon you and each of you in case of disobedience.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of our said circuit court at Brownsville, Texas, this 24th day of July, A. D. 1897.

[SEAL.] D. H. HART,
Clerk of the Circuit Court of the United States for the Fifth Circuit and Western District of Texas,
By CHAS. F. TILGHMAN, *Deputy.*

Marshal's return. Received this writ on the 24th, day of July, A. D. 1897, and I executed the same on the 24th, day of July, A. D. 1897, at Brownsville, Texas, and in my district, by delivering to the defendant Thomas Carson in person a true copy of this original writ of injunction, to Thomas Carson, as administrator, with the will annexed estate of Maria Josefa Cavazos. R. C. Ware, U. S. marshal for the western district of Texas, by John M. Haynes, deputy.

Endorsed : No. 21. Equity. In the circuit court of the United States in and for the western district of Texas, at Brownsville. C. B. Combe executor of Stephen Powers, deceased, *vs.* James Stillman *et al.* Original writ of injunction to Thomas Carson, as administrator with the will annexed of estate of Maria Josefa Cavazos, Brownsville, Texas. Issued July, 24th, 1897. D. H. Hart, clerk, by Chas. F. Tilghman, deputy. Filed July, 26th, 1897, D. H. Hart, clerk, by Chas. F. Tilghman, deputy.

95 In the United States Circuit Court for the Western District of Texas, at Brownsville.

The President of the United States of America to the marshal of the western district of Texas, Greeting:

You are hereby commanded, to serve Thomas Carson, individually, Brownsville, Texas, with the accompanying certified copy of order of court granting preliminary injunction and appointing receiver in case No. 21. equity, and styled, C. B. Combe, executor of Stephen Powers, deceased, *vs.* James Stillman, *et al.*

Herein fail not, and due return of this writ make.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of the circuit court of the United States for the western district of Texas, at Brownsville, this 24th, day of July, A. D. 1897.

[SEAL.]

D. H. HART,
Clerk of said Circuit Court,
By CHAS. F. TILGHMAN, *Deputy.*

Endorsed: Marshal's return. Received this writ on the 24th, day of July, 1897, and I executed the same on the 24th, day of July, 1897, by delivering to Thomas Carson, individually, in person at Brownsville Texas, in my district the accompanying copy of order of court named in this writ, certified by the clerk of this court. R. C. Ware, U. S. marshal, W. D. T. by John M. Haynes, deputy. No. 21. In equity. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, executor of Stephen Powers, deceased, *versus* James Stillman, *et al.* Writ to serve copy of order of court granting preliminary injunction, and appointing receiver. Thomas Carson, individually, Brownsville, Texas. Issued July, 24th, 1897. D. H. Hart, clerk, by Chas. F. Tilghman, deputy. Returned and filed July 26th, 1897. D. H. Hart, clerk, by Chas. F. Tilghman, deputy.

96 In United States Circuit Court for the Western District of Texas, at Brownsville.

C. B. COMBE, Executor of Stephen Powers, Dec'd,
vs.
JAMES STILLMAN ET AL.
} No. 21. In Equity.

UNITED STATES OF AMERICA,
State of Texas, County of Bexar.

Before me D. H. Hart, clerk of U. S. circuit court, on this day personally appeared S. J. Brooks, who being by me duly sworn deposes and says that he will faithfully perform and discharge his duties as receiver in the above entitled cause according to law and the directions of the court.

S. J. BROOKS.

Sworn to and subscribed before me this 4th, day of September, A. D. 1897.

D. H. HART,
Clerk U. S. Circuit Court,
By A. GROSENBACHER, *Deputy.*

Endorsed: No. 21. In equity. C. B. Combe, ex'r *vs.* Jas. Stillman, *et al.* Oath of receiver. Lodged Sept. 4th, '97.

97 U. S. Circuit Court for the Western District of Texas, at Brownsville, Texas.

C. B. COMBE, Executor of Stephen Powers, Deceased,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

THE STATE OF TEXAS, }
County of Bexar. }

Know all men by these presents: that we, S. J. Brooks, as principal and P. H. Swearingen and Thos. Johnson as sureties acknowledge ourselves bound to pay to the clerk of said court, for the use and benefit of all parties concerned and interested the sum of one thousand dollars for the payment thereof well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns jointly and severally by these presents.

Conditioned, however, that whereas by an order in the above entitled cause, made and entered July 15th, 1897, said S. J. Brooks, was by Honorable T. S. Maxey, judge of said court, appointed receiver in said cause of the fund alleged in plaintiff's bill of complaint to have been collected from the Government of the United States as the purchase money and compensation for Fort Brown reservation and for the use and occupation thereof from the date of its seizure down to the time said money was paid over to the defendants:

And whereas, said S. J. Brooks has accepted said appointment and qualified as such receiver;

Now therefore of the said S. S. Brooks shall faithfully perform and discharge all his said duties as such receiver and obey the orders of the court herein, then and in that event this obligation shall be null and void, otherwise to remain in full force and effect.

Witness our hands this 31st day of July, 1897.

S. J. BROOKS.
P. H. SWEARINGEN.
THOS. JOHNSON.

Approved August 10, 1897.
D. H. HART,
Clerk U. S. Circuit Court,
By A. GROSENBACHER, *Deputy.*

Endorsed: No. 21. In equity. In the circuit court of the United States in and for the western district of Texas, at Brownsville, Tex. C. B. Combe, executor of Stephen Powers, dec'd *vs.* James Stillman, *et al.* Bond of S. J. Brooks, receiver. Filed this 10 day of August, 1897. D. H. Hart, clerk, by A. Grosenbacher, deputy.

98

C. B. COMBE, Executor of Stephen Powers, Deceased. *vs.* JAMES STILLMAN ET ALS.	No. 21. In Equity. Suit Pending in the United States Circuit Court for the Western District of Texas, at Brownsville, Texas.

99

The President of the United States of America to James Stillman, New York city, New York:

Whereas, on the 15th day of July, A. D. 1897, in the above entitled and numbered cause, the complainant, C. B. Combe, executor of Stephen Powers, deceased, has prayed for and obtained from the Honorable T. S. Maxey, United States district judge for the western district of Texas, his most gracious writ of injunction, restraining and enjoining Thomas Carson, of the city of Brownsville, Cameron county, Texas, in his own right and as administrator with the will annexed of Maria Josefa Cavasos, and James Stillman, of the city of New York, State of New York, their agents, attorneys, solicitors and counsel, from using the judgement rendered on the 14th day of July, 1887, in suit No. 248, Heirs of Miguel Salinas *versus* William Kellogg, *et al.*, on the law docket of this court at Brownsville Texas, for the purpose of depriving the complainant and the other defendants to this suit of their interest in the fund of one hundred and sixty thousand ($160,000.00) dollars collected from the Government of the United States as the purchase money and compensation for Fort Brown reservation and for the use and occupation thereof from the date of its seizure down to the time said money was paid over to said Stillman and Carson, and from refusing to pay said fund into the hands of S. J. Brooks, the receiver appointed herein, and from refusing to account to this court for the same:

Now, therefore, we do strictly command, restrain and enjoin you, the said James Stillman, your agents, attorneys, solicitors, and counsel, from using the said judgement rendered on the 14th day of July, 1887, in suit No. 248, Heirs of Miguel Salinas *versus* William Kellogg *et al.*, on the law docket of the circuit court of the United States at Brownsville, Texas, for the purpose of depriving the complainant and the other defendants to this suit of their interest to the said fund of one hundred and sixty thousand (160,000.00) dollars, and from refusing to pay said fund into the hands of said receiver, and from refusing to account to this court for the same, under the pains and penalties which may fall upon you and each of you in case of disobedience.

100

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of our said circuit court at Brownsville, Texas, this the 24th day of July, A. D, 1897.

[SEAL.] D. H. HART,
Clerk of the Circuit Court of the United States for the Fifth Circuit and Western District of Texas,
By CHAS. F. TILGHMAN, *Deputy.*

Endorsement: In the circuit court of the United States, in and for the western dist. of Texas at Brownsville. C. B. Combe, executor of Stephen Powers, deceased *vs.* Jas. Stillman *et al.* Original. Writ of injunction to James Stillman New York N. Y. Issued July 24th, 1897 D. H. Hart clerk by Chas. F. Tilghman deputy.

Form # 302.

I hereby certify that on the 30th day of August 1897 at the city of New York in my district I personally served the within writ of injunction upon the within named defendant by exhibiting to him the within original, at the same time leaving with him a copy thereof.

JOHN H. McCARTY,
United States Marshall, Southern District of New York.

Filed Sept. 7th 1897.

D. H. HART, *Clerk,*
By CHAS. F. TILGHMAN, *Dy.*

101 In the United States Circuit Court for the Western District of Texas, at Brownsville.

The President of the United States of America to the marshal of the southern district of New York, Greeting:

You are hereby commanded to serve James Stillman, of New York city, New York, with the accompanying certified copy of order of court granting preliminary injunction and appointing receiver in case No. 21, and styled C. B. Combe, executor of Stephen Powers, deceased *vs.* James Stillman, *et al.* Herein fail not, and due return of this writ make.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the United States, and the seal of the circuit court of the United States for the western district of Texas, at Brownsville, this 24th, day of July, A. D. 1897.

D. H. HART,
Clerk of said Circuit Court,
By CHAS. F. TILGHMAN, *Deputy.*

Endorsed: No. 21. Equity. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, executor of Stephen Powers, deceased, *versus* James Stillman, *et al.* Writ to serve copy of order of court granting preliminary injunction, and appointing receiver, on James Stillman, New York, N. Y. Issued July, 24th, 1897. D. H. Hart, clerk, by Chas. F. Tilghman, deputy.

Marshal's return. Received this writ on the 31st, day of July, 1897, and I executed the same on the 30th, day of August, 1897, by delivering to the within named defendant James Stillman, in person at 52 Wall street New York city, in my district, the accompanying copy of order of court named in this writ, certified by the clerk of this court John H. McCarty, U. S. marshal, S. D. of N Y. by J. E. D. deputy. Filed, September, 7th, 1897. D. H. Hart, clerk. by Chas. F. Tilghman, deputy.

102 In the United States Circuit Court for the Western District of Texas, at Brownsville.

C. B. COMBE, Executor,
vs.
JAMES STILLMAN ET ALS. } No. 21. In Equity.

Now comes James Stillman, through his solicitors, Farrar, Jonas, Kruttschnitt and Gurley, and enters herein this his limited and modified appearance merely for the purpose of contesting the jurisdiction of this honorable court over him personally, and over the subject-matter of this suit, and protests that this appearance is not to be considered as an appearance for any other purpose whatsoever.

FARRAR, JONAS, KRUTTSCHNITT & GURLEY, *Solicitors.*

Endorsement: No. 21. In *in* the United States circuit court for the western district of Texas, at Brownsville. C. B. Combe, executor, *vs.* James Stillman, *et als.* Limited and modified appearance of James Stillman. Filed May, 3, 1898. No. 43. D. H. Hart, clerk, by Chas. F. Tilghman, deputy.

103 In the United States Circuit Court for the Western District of Texas, at Brownsville.

C. B. COMBE, Executor,
vs.
JAMES STILLMAN ET ALS. } No. 21. In Equity.

To the honorable judges of the said United States circuit court:

James Stillman, herein appearing under protest, respectfully denying the jurisdiction of this court over him, and appearing merely

and solely for the purpose of contesting the jurisdiction of this h
orable court, files this his separate plea to the bill of complain
C. B. Combe, executor of Stephen Powers, deceased; and for ca
of plea this defendant avers:

First. That each and every allegation in the bill of compla
herein, which avers that this defendant has ever at any time set
or has ever attempted to set up or ever intended to set up the ju
ment of the circuit court of the United States, for the western dist
of Texas, in cause No. 248, styled "Heirs of Miguel Salinas
William L. Kellogg and others," or any other judgement or dec
in bar of any of the alleged rights and claims of the complainan
and to any part of the fund of $160.000, mentioned in the bil
complaint, is entirely untrue; and each and every allegation c
tained in the said bill of complaint, which avers that this defend
ever used or attempted to use, or intends to use the said judgem
or any judgement, to defeat any alleged right or claim of the s
complainant in and to the said fund or any part thereof, or t
this defendant has taken or proposes to take, or intends to take
sort or kind of advantage over the complainant growing out of
said judgement, in violation or in contravention of the agreem
between the parties set up in the said bill, is also entirely untr
and that each and every such allegation was inserted in the s
bill, merely for the purpose of making it appear, if possible, t
this suit is a suit ancillary to the said action at law, in which
said judgement or decree was rendered, and ancillary to such jud
ment or decree; whereas in truth, and in fact, this suit is
104 in any way ancillary to the said action or to the said jud
ment or decree; and it has no connection therewith or c
nection thereto.

Second. That this defendant has never refused, declined or
glected to perform, upon his part, the agreement set forth in the
of complaint herein, dated the thirteenth day of July, 1887 but
has at all times been ready and willing to perform the same, so
as it was possible of performance; and he has fully performed ev
condition and covenant, on his part, contained in the said agr
ment, except that for the deposit of certain moneys to the credi
Messrs. Ballinger, Waul, and Culberson, arbitrators, which part
the said agreement was and is impossible of performance, for
reason that, as appears by the bill of complaint and as this defe
ant is informed and believes is the fact, the said Ballenger died a
the said Culberson positively refused to act as such arbitrator,
fore any money was received from the Government of the Unit
States, and none of such money was received for more than eig
years after the said agreement was executed; and this defendant
informed and believes that the said Waul never acted as arbitrat
that no arbitrators were ever appointed in place of the one who h
dies and the one who had refused to act; that this defendant w
not empowered, by the said agreement or in any other way, to
point any new arbitrator; that there were no arbitrators, to wh

credit the said moneys could be deposited; and it would have been a distinct violation of the terms of the said agreement, and directly contrary to the understanding of all the parties thereto, to deposit any part of such moneys with Ball, Hutchings, & Co., to the credit of any one of the arbitrators mentioned in the said agreement, without the two others, or to the credit of any person or persons other than all the three arbitrators expressly named in the said agreement, or three arbitrators appointed in their place, in the precise manner prescribed by the agreement; and this defendant is advised and believes that in retaining the proceeds of the said property so far as they have come into his hands, until three arbitrators are appointed in the manner prescribed by the said agreement who
105 are willing to act as such, this defendant has fully and literally performed all the obligations imposed upon him by the said agreement, with reference to the said proceeds.

Third. That as this defendant is informed and believes, each and every allegation contained in the bill of complaint, to the effect that the district attorney of the United States, or the United States were parties to the said agreement, dated the thirteenth day of July, 1887, mentioned in the complaint, or that the said district attorney or the United States took or could take any advantage or benefit therefrom, is entirely untrue.

Fourth. That as this defendant is informed and believes, the United States never at any *tiem*, claimed title to the Fort Brown reservation, and that they were always willing to pay the value thereof to the person or persons who might have lawful title thereto; and that the agreement aforesaid was made solely between the parties whose names are subscribed thereto and exclusively for their own use, benefit and advantage, and not for the benefit or advantage of the United States, but for the purpose of vesting title to the property in dispute conclusively, by a judicial record in favor of this defendant and Thomas Carson, as administrator, in order that they might receive the fund which the United States were willing to pay therefor; and this defendant further avers that it was the intention of all the parties to the said agreement, including the complainant, that the judgement rendered in the said cause should be rendered upon evidence and not by consent on the record; that it should be absolutely final and conclusive, between all the parties to the record, as to the title to the said property, that the alleged rights of Leocardio Salinas, Antonio Salinas, and Melchor Salinas should be absolutely divested, without compensation; and that the rights of all the other parties, including the complainant, to any fund which might thereafter be received from the sale of the said real estate were to be governed and regulated exclusively by the terms of the said agreement; that the cause was tried upon evidence and a verdict rendered in accordance therewith, without any reference
106 to the said agreement; and such agreement was and was intended to be a strictly private agreement between the parties actually subscribing the same, which was not in any way or degree

to be connected with the title to the real estate which is the subject matter of the litigation in the said action.

Fifth. That as this defendant is advised and believes, the allegations of the said bill denied in this plea are the only allegations upon which the said bill of complaint relies, to establish its claim that the bill herein filed is ancillary to the action at law and judgement in the said cause No. 248, entitled "Heirs of Miguel Salinas *vs.* William L. Kellogg and others," and to overcome the objections to the jurisdiction of this honorable court, which appear upon the face of the said bill. That it appears upon the face of the said bill that this honorable court is without jurisdiction to hear and entertain the same, for the reason that the complainant is a citizen of the State of Texas, that many of the defendants are citizens of the same State and are all necessary parties to this cause, without whose presence a complete determination of the controversy herein cannot be had, and that all such parties were such citizens at the time that the bill was filed; and it further appears upon the face of the said bill that this cause has no ancillary relation to any other cause now or heretofore pending in this court, or to any judgement rendered in this court, unless the allegations hereinbefore denied should be deemed sufficient to establish such relation, if they had been true.

Sixth. That as this defendant is informed and believes, the judgement rendered in this court in the said cause No. 248, was, and was intended by all the parties thereto, including especially the complainant herein, to be absolutely final and conclusive, free from all trust-, conditions and qualifications, and was intended by all the parties thereto, including the complainant, absolutely to divest the title of all parties to the Fort Bowyn reservation and to vest an absolute and unqualified title thereto in this defendant and Thomas Carson, as administrator, free from all trust-, conditions and qualifications; the Government of the United States purchased the said property and paid the price thereof to this de-
107 fendant and the said Thomas Carson, as administrator, in reliance upon their having such absolute title thereto; the complainant well knew that the said Government so relied and he intended that it should rely upon the said judgement, as giving to this defendant and the said Carson, as administrator, such absolute title; nothing was or was intended to be left to be done, relative to the said judgement or subject-matter thereof, either by the court or by any of the parties to the said judgement; and it was the distinct understanding, agreement and intention of all the parties thereto, including the complainant, that whatever agreement might be made between any of them, and especially the agreement which in fact was made, should be absolutely independent of the said judgement and should not be in any sense ancillary thereto; and the agreement alleged in the bill of complaint was intentionally made by all the parties thereto with the full understanding that it could not in any way be brought into or made use of in any proceedings in the cause entitled "Heirs of Miguel Salinas *vs.* William L. Kellogg and others,"

or in or about or with reference to the judgement rendered in the said cause, nor for the purpose of modifying the said judgement in any way; but it was the full intention and understanding of all the said parties, including the complainant, that the said agreement should be absolutely independent of the said cause and the said judgement.

Wherefore, this defendant prays that this plea may be maintained and the said bill herein be dismissed with costs.

FARRAR, JONAS, KRUTTSCHNITT & GURLEY, *Solicitors.*

EDGAR H. FARRAR, *Counsel.*

108 SOUTHERN DISTRICT OF NEW YORK, } *County and State of New York.* }

Personally came and appeared before me the undersigned authority, James Stillman, who being duly sworn deposes and says, that he has read the foregoing plea and knows the contents thereof and the same is true in point of fact, and that the same is not interposed for delay.

JAS. STILLMAN.

Sworn to and subscribed before me this 13th day of May, 1898.

[SEAL.] CORNELIUS A. LOUGHLIN, *Notary Public, New York County.*

Certificate of Counsel.

I, the undersigned, counsel for James Stillman, do hereby certify that I believe the foregoing plea to be good in point of law.

EDGAR H. FARRAR, *Counsel.*

Endorsed: #21 Equity C. B. Combe ex. &c. *vs.* James Stillman Thomas Carson adm'r *et al.* Plea of defendent Jas. Stillman to the jurisdiction Filed May 21st 1898 D. H. Hart cl'k By Chas. L. Tilghman dp.

109 In the United States Circuit Court for the Western District of Texas, at Brownsville.

C. B. COMBE, Executor, *vs.* JAMES STILLMAN ET ALS. } No. 21. In Equity.

To the honorable judges of the said United States circuit court:

Thos. Carson, individually and as administrator of the estate of Maria Josefa Cavasos, deceased, herein appearing under protest, re-

spectfully denying the jurisdiction of this court over him, and appearing merely and solely for the purpose of contesting jurisdiction of this honorable court, files this his separate plea to the bill of complaint of C. B. Combe, executor of Stephen Powers, deceased; and for cause of plea this defendant avers:

First. That each and every allegation in the bill of complaint herein, which avers that this defendant has ever at any time set up or has ever attempted to set up or ever intended to set up the judgement of the circuit court of the United States, for the western district of Texas, in cause No. 248, styled "Heirs of Miguel Salinas *vs.* William L. Kellogg and others," or any other judgement or decree in bar of any of the alleged rights and claims of the complainant in and to any part of the fund of $160,000. mentioned in the bill of complaint, is entirely untrue; and each and every allegation contained in the said bill of complaint, which avers that this defendant ever used or attempted to use, or intends to use, the said judgement or any judgement, to defeat any alleged right or claim of the said complainant in and to the said fund, or any part thereof, or that this defendant has taken or proposes to take, or intends to take any sort or kind of advantage over the complainant, growing out of the said judgement, in violation or in contravention of the agreement between the parties set up in the said bill, is also entirely untrue; and that each and every such allegation was inserted in the said bill merely for the purpose of making it appear, if possible, that this suit is a suit ancillary to the said action at law, in which the
110 said judgement or decree was rendered and ancillary to such judgement or decree; whereas, in truth and in fact, this suit is not in any way ancillary to the said action or to the said agreement or decree; and it has no connection therewith or relation thereto.

Second. That this defendant has never refused, declined or neglected to perform, upon his part, the agreement set forth in the bill of complaint herein, dated the thirteenth day of July, 1887, but he has at all times been ready and willing to perform the same, so far as it was possible of performance; and he has fully performed every condition and covenant, on his part, contained in the said agreement, except that for the deposit of certain moneys to the credit of Messrs. Ballinger, Waul and Culberson, arbitrators, which part of the said agreement was and is impossible of performance, for the reason that as appears by the bill of complaint and as this defendant is informed and believes is the fact, that the said Ballinger died and the said Culberson positively refused to act as such arbitrator, before any money was received from the Government of the United States, and none of such money was received for more than eight years after the said agreement was executed; and this defendant was informed and believes that the said Waul never acted as arbitrator, that no arbitrators were ever appointed in place of the one who had died and the one who had refused to act; that this defendant was not empowered, by the said agreement or in any other way, to appoint any

new arbitrator; that there were no arbitrators, to whose credit the said moneys could be deposited; and it would have been a distinct violation of the terms of the said agreement, and directly contrary to the understanding of all the parties thereto, to deposit any part of such moneys with Ball, Hutchings & Co., to the credit of any one of the arbitrators mentioned in the said agreement, without the two others, or to the credit of any person or persons other that all the three arbitrators expressly named in the said agreement, or three arbitrators appointed in their place, in the precise manner prescribed by the said agreement, and no part or portion of said fund was ever by this defendant collected; and this defendant is advised and believes that in retaining the proceeds of the said property, so
111 far as they have come into the hands of his co-defendant Stillman, until three arbitrators are appointed in the manner prescribed by the said agreement, who are willing to act as such; said Stillman has fully and literally performed all the obligations imposed upon him by the said agreement, with reference to the said proceeds, and so likewise has this defendant.

Third. That as this defendant is informed and believes, each and every allegation contained in the bill of complaint, to the effect that the district attorney of the United States or the United States were parties to the said agreement, dated the thirteenth day of July 1887, mentioned in the complaint, or that the said district attorney or the United States took or could take any advantage or benefit therefrom, is entirely untrue.

Fourth. That as this defendant in informed and believes, the United States never, at any time, claimed title to the Fort Brown reservation, and that they were always willing to pay the value thereof to the person or persons who might have lawful totle thereto; and that the agreement aforesaid was made solely between the parties whose names are subscribed thereto and exclusively for their own use, benefit and advantage, and not for the benefit or advantage of the United States, but for the purpose of vesting title to the property in dispute conclusively, by a judicial record in favor of this defendant as administrator and said Stillman in order that they might receive the fund which the United States were willing to pay therefor; and this defendant further avers that *that* it was the intention of all the parties to the said agreement, including the complainant, that the judgement rendered in the said cause should be rendered upon evidence and not by consent on the record; that it should be absolutely final and conclusive, between all the parties to the record, as to the title to the said property; that the alleged rights of Leocardio Salinas, Antonio Salinas and Melchor Salinas should be absolutely divested without compensation; and that rights of all the other parties, including the complainant, to any fund which might thereafter be received from the sale of the said real estate were to be governed and regulated exclusively by the terms of the
112 said agreement; that the case was tried upon evidence and a verdict rendered in accordance therewith, without any ref-

erence to the said agreement; and such agreement was and was intended to be a strictly private agreement between the parties actually subscribing the same, which was not in any way or degree to be connected with the title to the real estate which is the subject matter of the litigation in the said action.

Fifth. That as this defendant is advised and believes, the allegations of the said bill denied in this plea are the only allegations upon which the said bill of complaint relies, to establish its claim that the bill herein filed is ancillary to the action at law and judgement in the said cause No. 248, entitled "Heirs of Miguel Salinas *vs.* William L. Kellogg and others," and to overcome the objections to the jurisdiction of this honorable court, which appears upon the face of the said bill: that it appears upon the face of the said bill that this honorable court is without jurisdiction to hear and entertain the same, for the reason that the complainant is a citizen of the State of Texas, that many of the defendants are citizens of the same State and are all necessary parties to this cause, without whose presence a complete determination of the controversy herein cannot be had, and that all such parties were such citizens at the time that the bill was filed; and it further appears upon the face of the said bill that this cause has no ancillary relation to any other cause now or heretofore pending in this court, or to any judgement rendered in this court, unless the allegations hereinbefore denied should be deemed sufficient to establish such relation, if they had been true.

Sixth. That as this defendant is informed and believes the judgement rendered in this court in the said cause No. 248 was, and was intended by all the parties thereto, including especially the complainant herein, to be absolutely final and conclusive, free from all trust-, conditions and qualifications, and was intended by all the parties thereto, including the complainant, absolutely to divest the title of all parties to the Fort Brown reservation and to vest an absolute and unqualified title thereto in this defendant and Thomas Carson, as administrator, free from all trust-, conditions and qualifications; the Government of the United States
113 purchased the said property and paid the price thereof to the co-defendant of this defendant, to-wit: James Stillman, in reliance upon said Stillman and this defendant as administrator having such absolute title thereto; the complainant well knew that the said Government so relied and he intended that it should rely upon the said judgement, as giving to this defendant, and the said Carson, as administrator, such absolute title; nothing was or was intended to be left to be done, relative to the said judgement or subject matter thereof, either by the court or by any of the parties to the said judgement; and it was the distinct understanding, agreement and intention of all the parties thereto, including the complainant, that whatever agreement might be made between any of them, and especially the agreement which in fact was made, should be absolutely independent of the said judgement and should not be in any sense ancillary thereto; and the agreement alleged in the bill of complaint was

intentionally made by all the parties thereto with the full understanding that it could not in any way be brought into or made use of in any proceedings in the cause entitled "Heirs of Miguel Salinas *vs.* William L. Kellogg and others," or in or about or with reference to the judgement rendered in the said cause, nor for the purpose of modifying the said judgement in any way; but it was the full intention and understanding of all the said parties, including the complainant, that the said agreement should be absolutely independent of the said cause and the said judgement.

Wherefore, this defendant prays that this plea may be maintained and the said bill herein be dismissed with costs.

114 THE STATE OF TEXAS, }
County of Cameron. }

Personally came and appeared before me, the undersigned authority, Thos. Carson, who being duly sworn deposes and says, that he has read the foregoing plea and knows the contents thereof and the same is true in point of fact, and that the same is not interposed for delay.

THOMAS CARSON.

Sworn to and subscribed before me this 25th day of May, 1898.

[SEAL.] D. H. HART, *Clerk*,
By CHAS. F. TILGHMAN, *Deputy*.

Certificate of Counsel.

I, the undersigned, counsel for Thos. Carson, do hereby certify that I believe the foregoing plea to be good in point of law.

THOS. H. FRANKLIN.

Endorsement: Filed May, 25th. 1898. No. 51. D. H. Hart, clerk, by Chas. F. Tilghman, deputy. No. 21 Equity. C. B. Combe, executor *vs.* Jas. Stillman, *et als.* Plea of defendant Thos. Carson, adm'r, etc. to the jurisdiction.

115 In the Circuit Court of the United States for the Western District of Texas, Brownsville Division.

C. B. COMBE, Executor, }
vs. } No. 21. In Equity.
JAMES STILLMAN ET AL. }

Be it remembered that on this 27th day of May, A. D. 1898, in open court in the city of San Antonio, Texas, came on to be heard the application of the plaintiff C. B. Combe, executor for a rule *ni si*

upon the defendants James Stillman and Thomas Carson, administrator, etc., and in his own right, to appear before the court to show cause why they should not be adjudged guilty of contempt for the violation of a writ of injunction heretofore granted in this cause enjoining and restraining them from using the said judgement rendered on the 14th day of July, 1887 in suit No. 248, Heirs of Migues Salinas *vs.* William Kellogg, *et al.* on the law docket of the circuit court of the United States at Brownsville, Texas, for the purpose of depriving the complainant and other defendants in this suit of their interest in said fund of $160.000.00 mentioned in plaintiff's bill, and from refusing to pay said sum into the hands of S. J. Brooks, receiver herein, and from refusing to account to this court for the same under the pains and penalties which may fall upon them in case of disobedience;

And the court having heard said application read, and the affidavits attached thereto, and being fully advised in regard to the said application, *it is ordered, adjudged, and decreed* by the court that the said defendants James Stillman and Thomas Carson, executor as aforesaid, and in his own right do show cause, if any they can, at 10 o'clock a. m., July, 5th, A. D. 1898, at the city of Austin, Texas, in the circuit court room why they should not be adjudged guilty of contempt for disobedience of said writs of injunction and the order entered herein on July, 15th, 1897, awarding the said writs of injunction.

It is further ordered, adjudged, and decreed that a copy of this order be served in person upon the defendant Thomas Carson as aforesaid by the United States marshal of the western district of Texas, and that a copy of said order be served upon the de-
116 fendant James Stillman personally by the United States marshal for the southern district of New York, and that writs of execution in chancery for the service of said order do also issue. The clerk will enter this order of record at the San Antonio and Brownsville divisions of the court.

Ordered, adjudged, and decreed in open court at San Antonio, Texas, this the 27th day of May, A. D. 1898.

T. S. MAXEY, *Judge.*

Endorsed: In the circuit court of the United States in and for the western district of Texas, at San Antonio. C. B. Combe, ex'r. *vs.* James Stillman, *et al.* Order to show cause of violation *fo* writ of injunction. Filed this 27th, day of May, 1898. D. H. Hart, clerk, by A. Grosenbacher, deputy. Entered and filed, June 6, 1898. D. H. Hart, clerk, by Chas. F. Tilghman, deputy.

117 In the Circuit Court of the United States for the Western District of Texas, Brownsville Division.

C. B. COMBE, Independent Executor of Stephen Powers, Deceased, Plaintiff,
vs.
JAMES STILLMAN ET AL., Defendants.
} No. 21. In Equity.

To the judges of the circuit court of the United States for the western district of Texas:

I.

Now come the said plaintiff, C. B. Combe, executor, and also the United States of America, upon the relation of the said C. B. Combe, and present to the court this their complaint and information against the said defendant James Stillman, and the said defendant, Thomas Carson, administrator, *c. t. a.* of Maria Josefa Cavazos, and in his own right, and aver and inform the court that the said defendants, James Stillman, and Thomas Carson, as administrator and in his own right as aforesaid, have, to the great wrong and injury of plaintiff, and in violation of the laws of the United States, and in contempt of the authority of the United States, and in contempt of the authority and dignity and power of the circuit court of the United States for the western district of Texas, disobeyed and violated and are now disobeying and violating a certain order, judgment and decree, and certain civil processes heretofore duly and lawfully made and had and entered, and issued and served, by and under, and by
118 virtue of the authority of the circuit court of the United States for the western district of Texas, and under and by virtue of the power and authority vested in said court by the Constitution and laws of the United States of America, in this, to-wit:

II.

On the 15th day of July, A. D. 1897, as appears from the record, the said court, in the above stated cause, made, pronounced and entered an interlocutory decree in the words and figures following, to-wit:

"C. B. COMBE, Executor of Stephen Powers, Deceased,
v.
JAMES STILLMAN ET AL.
} No. 21. In Equity.

Suit pending in the United States circuit court for the western district of Texas, at Brownsville, Texas.

Be it remembered, that on this the 15th day of July, 1897, in open court, at Austin, Texas, came on to be heard the motion and

application of plaintiff herein for the appointment of a receiver, and for the issuance of a preliminary writ of injunction upon plaintiff's bill, motion, proof of service of notice of said motion, the response of defendant Carson, as administrator and individually, to said motion, and the record in suit No. 248 on the law docket of said court at Brownsville; and defendant James Stillman not appearing, and the court having heard argument of counsel and being advised of all matters of fact and of law arising upon said motion and application, and of the response thereto, is of opinion that the court has jurisdiction of this cause as being a suit ancillary to said cause No. 248 on the law docket of this court, and is therefore of
119 opinion that the same should be sustained:

It is therefore ordered, adjudged and decreed by the court that the said application of plaintiff C. B. Combe, for the appointment of a receiver, and for preliminary writs of injunction herein be, and the same is hereby sustained.

It is further ordered, adjudged and decreed by the court that S. J. Brooks be and is hereby appointed receiver in this cause, but before entering upon his duties he shall execute bonds, with two good and sufficient sureties, in the penalty of one thousand dollars, to be hereafter increased according to circumstances, conditioned and payable according to law, said bond to be approved by the clerk of this court or any lawfully constituted deputy; and shall take and file in writing an oath that he will discharge his duty as receiver according to law and the direction of the court.

It is further ordered, adjudged and decreed by the court that the said S. J. Brooks, receiver, when he shall have qualified as hereinabove directed, be and he is hereby authorized to bring such suits as he may be advised by his counsel and ordered by the court, for the purpose of recovering the one hundred and sixty thousand dollars alleged in plaintiff's bill of complaint to have been collected from the Government of the United States as the purchase money and compensation for Fort Brown reservation, and for the use and occupation thereof from the date of its seizure down to the time said money was paid over to said defendants.

It is further ordered, adjudged and decreed by the court that the said Thomas Carson, in his own right and as administrator with the will annexed of Maria Josefa Cavazos, and the said James Stillman, their agents, attorneys, solicitors and counsel, be, and they are hereby restrained and enjoined from using the judgment rendered on the fourteenth day of July, 1887, in suit No. 248, Heirs of Miguel Salinas *vs.* William Kellogg, *et al.*, on the law docket of this
120 court at Brownsville, Texas, for the purpose of depriving plaintiff and the other defendants to this suit of their interest in said fund of one hundred and sixty thousand dollars, and from refusing to pay said fund into the hands of said receiver, and from refusing to account to this court for the same.

It is further ordered, adjudged and decreed that the preliminary writ of injunction do issue out of this court in accordance with the

above order, and be served on the defendant Carson, as administrator and individually, by the marshal of the western district of Texas, and upon the said defendant Stillman by the marshal of the southern district of the State of New York.

It is further ordered, adjudged and decreed that a writ of execution in chancery do issue out of this court to the marshal of the western district of Texas, commanding him to serve this order upon the said defendant Carson, as administrator and individually, and also to the marshal of the southern district of the State of New York, commanding him to servie this order upon the said defendant James Stillman.

To all of which said order, judgment and decree the defendant Thomas Carson, administrator and individually, excepted and in open court prayed an appeal therefrom to the United States circuit court of appeals for the fifth circuit, sitting at New Orleans, Louisiana, which appeal is hereby granted him individually and as such administrator. And all further proceedings herein be stayed until the determination of this appeal, except the issuance and service of process. Appeal bond is fixed at $500.00.

It is further ordered that this order be entered upon the minutes of the court at Austin and then trabsmitted to Brownsville for record there, which is hereby ordered to be done.

Ordered, adjudged and decreed in open court at Austin Texas, this July 15th, 1897.

T. S. MAXEY, *Judge.*

121 III.

And as appears from the record in the above stated cause, on July 24, 1897, there were issued out of said court, pursuant to the aforesaid interlocutory decree, and in the terms thereof, writs of injunction to defendants James Stillman and Thomas Carson, each respectively, commanding, restraining and enjoining them and each of them, their agents, attorneys, solicitors and counsel, from using the said judgment rendered on the fourteenth day of July, 1887, in suit No. 248, Heirs of Miguel Salinas *vs.* William Kellogg, *et al.*, on the law docket of the circuit court of the United States, at Brownsville, Texas, for the purpose of depriving the complainant and *and* the other defendants in this suit of their interest in said fund of one hundred and sixty thousand ($160,000.00) dollars, (being the same fund paid by the United States Government into the hands of said defendants James Stillman and Thomas Carson, as the purchase money of Fort Brown, Texas,) and from refusing to pay said fund into the hands of said receiver, and from refusing to account to this court for the same, under the pains and penalty by law imposed upon them in case of disobedience; which writ of injunction was personally served upon defendant Thomas Carson, on July 24, 1897, and personally served on defendant James Stillman, on August 30, 1897, as will more fully appear from the record in this cause, reference being thereto had for greater certainty.

IV.

And the defendant Thomas Carson prayed and obtained and prosecuted an appeal from the aforesaid interlocutory decree of July 15, 1897, to the United States circuit court of appeals for the fifth circuit, which circuit court of appeals, on or about March 1st, 1898, in all things affirmed said interlocutory decree; and a motion
122 for a re-hearing of said cause on appeal was duly made, which motion was, on or about April 19th, 1898, overruled by said court of appeals, and since then a mandate has been duly issued upon said affirmance by said court of appeals, to this court, of which mandate the defendants James Stillman and Thomas Carson have full notice.

V.

And as appears of record, the said S. J. Brooks, about August 10th, 1897 duly qualified as receiver herein, according to law and the order of the court, reference being had to the records for greater certainty. And a demand has been made by the said S. J. Brooks, as receiver, upon the said defendants James Stillman and Thomas Carson, for the payment to him by them of the said fund of one hundred and sixty thousand dollars ($160,000.00), which demand they have both wholly disregarded; and the said defendants James Stillman and Thomas Carson, and each of them, have failed and refused to pay to said S. J. Brooks, receiver, the said sum of one hundred and sixty thousand dollars ($160,000.00) and they the said defendants James Stillman and Thomas Carson have not paid any part of said fund to said receiver. And the said defendants James Stillman and Thomas Carson are still using the judgment rendered on July 14, 1887, in suit No. 248, Heirs of Miguel Salinas *vs.* William Kellogg, *et al.*, on the law docket of the circuit court of the United States at Brownsville, Texas, to deprive the complainant and the other defendants to this suit of their interest in said fund of one hundred and sixty thousand dollars ($160,000.00), and have failed and refused and still fail and refuse to account to this court for said fund.

VI.

And it is further averred, and the court is further informed,
123 that the said defendants James Stillman and Thomas Carson have collected said fund of one hundred and sixty thousand dollars ($160,000.00) and are fully able to, and have it fully within their power to comply with said interlocutory decree of July 15, 1897, and the writs of injunction issued pursuant thereto, as fully appears from exemplified copies of certain records of the War Department and the Treasury Department of the United States, showing the collection of said fund by defendants James Stillman and Thomas Carson; which exemplified records are hereto attached, marked Exhibit- A and B respectively and made part of this complaint and information.

VII.

And it is further averred and shown to the court that the said defendants James Stillman and Thomas Carson are persistently and pertinaciously resisting said interlocutory decree and said writs of injunction, and refusing obedience to the same, and are acting together and in concert with each other to that end; all of which is to the great and irretrievable wrong and injury of the plaintiff, and in contempt of the circuit court of the United States for the western district of Texas, and contrary to the laws and against the peace and dignity of the United States of America.

VIII.

Wherefore, the said C. B. Combe, executor, plaintiff, and as relator, prays that a rule *nisi* be made and entered, and served upon the defendants James Stillman and Thomas Carson, requiring them to appear in their own proper persons before this court, on a day named in such order, to show cause, if any they can, why they
124 should not be adjudged guilty of contempt of this court and punished accordingly. Or if the court shall deem just and proper, that a writ or writs of attachment be immediately issued for the apprehension and arrest of either or both of said defendants, and that they or either of them be brought before the court, and required to purge their contempt, or failing be punished therefor. And the plaintiff and relator pray that upon a hearing hereof the said defendants James Stillman and Thomas Carson be held in custody until they shall obey said order writs of injunction, and that they be punished according to law for their said contempt and he prays for all necessary and proper orders, processes and general relief.

C. B. COMBE,
Ex'r, Plaintiff and Relator,
By C. L. BATES,
His Agent and Counsel.

W. N. PARKS,
C. L. BATES,
Counsel for C. B. Combe, Executor, Plaintiff, etc.

DEPARTMENT OF JUSTICE,
AUSTIN, TEXAS, *July* 17, 1897.

C. L. Bates, Esq., San Antonio, Texas.

DEAR SIR: I herewith enclose to you transcript from the War Department, which I received this morning, and one from the Treasury Department, which you requested in the case of Combe, executor, *vs.* Stillman and Carson, *et al.* Please acknowledge receipt of same.

125 Yours very truly, D. H. HART, *Clerk.*

2 enclosures.

Ex. A.

UNITED STATES OF AMERICA,
WAR DEPARTMENT,
WASHINGTON CITY, *July* 10, 1897.

I hereby certify that the papers hereto attached are a true copy of the press copy of letter of the Assistant Secretary of War, dated April 25th, 1895, and of the original letter of the depot quartermaster at Washington, D. C., dated April 26th, 1895, in the matter of payment for the military reservation of Fort Brown, Texas, on file in the Judge Advocate General's Office, War Department.

G. NORMAN LIEBER,
Judge Advocate General

Be it known that G. Norman Lieber, who signed the foregoing certificate, is the Judge Advocate General of the United States Army and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed, on this 13th [SEAL.] day of July, one thousand eight hundred and ninety-seven.

G. D. MEIKLEJOHN,
Assistant Secretary of War.

126 APRIL 25TH, 1895.

Gen. R. N. Batchelder, Quartermaster General, U. S. A.

SIR: Referring to letters from this office dated March 25, 1895, and April 1st, 1895, respectively, and to the opinion of the Attorney-General—copy enclosed—dated April 24, 1895, that a complete title to the Fort Brown Military reservation is now vested in the United States, you are hereby directed to cause to be paid to James Stillman, and Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, the sum of $160,000.00 in full payment for said reservation and for all claims of every nature and kind against the United States on account of said reservation, as provided in the act of Congress approved March 3rd, 1885 (23 Stat. 507), said sum being the aggregate of the two sums named in the letters above referred to.

Very respectfully,

JOSEPH B. DOE,
Assistant Secretary of War.

DEPOT QUARTERMASTER'S OFFICE,
WASHINGTON, D. C., *April 26th*, 1895.

To the Quartermaster General, U. S. Army.

SIR: I have the honor to acknowledge receipt of letter of the Assistant Secretary of War, dated April 25th, 1895, referred to this

office by the Quartermaster General the same date, (#1143
127 E. Q. M. G. O.) and to report that my check for $160,000.00 on the Treasurer U. S., Washington, D. C., to the order of James Stillman, and Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, for the purchase of the Fort Brown reservation, Texas, was *ah*nded to John A. Garver, attorney, today.

Very respectfully, your obedient servant,

C. R. BARNETT,
Quartermaster U. S. Army, Depot Quartermaster.

Ex. B.

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *July* 14, 1897.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals on file in this department.

In witness whereof I have hereunto set my hand and
[SEAL.] caused the seal of the Treasury Department to be affixed, on the day and year first above written.

L. J. GAGE,
Secretary of the Treasury.
T. A. D.

L. J.
M. H.

128 (The upper portion of this document is covered so that it is impossible for the transcriber to read it.)

—— ——, as administrator of the estate of Maria Josefa Cavazos, deceased, Dr.

Date.		Dollars.	Cts.
Washington, D. C., April 25, 1895.	For the purchase of the Fort Brown reservation, situated in Cameron county, State of Texas, containing about 358 8/10 acres of land, and to pay and extinguish all claims for the use and occupancy of said reservation by the United States, in accordance with act of Congress (sundry civil) approved March 3, 1885	$160,000.00	

Payment made by direction of the Assistant Secretary of War under date of April 25, 1895 (E 1143 Q. M. G. O.) herewith.

I certify that the above is correct and just.

C. R. BARNETT,
Quartermaster, U. S. Army.

Received at Washington, D. C. the 26th day of April, 1895, of Major C. R. Barnett, quartermaster, United States Army, the sum of one hundred and sixty thousand (160,000.00) dollars and — cents, in full of the above account.

JAMES STILLMAN,
By JOHN A. GARVER, *Attorney.*
THOMAS CARSON,
As Administrator of the Estate of
Maria Josefa Cavazos, Deceased,
By JOHN A. GARVER, *Attorney.*

(Signed in duplicate)

Endorsements: "No year appropriations—Form No. 13. Voucher No. 1, abstract B, April, 1895 James Stillman & Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased Dollars, $160,000.00 Paid April 29, 1895—Check: No. 126538—Date, April 29, 1895, Amount, $160,000.00 Depository: U. S. Treasury. To the order of James Stillman and Thomas Carson, adm'r of the estate of Maria Josefa Cavazos deceased. C. R. Barnett, quartermaster U. S. A.

129

WAR DEPARTMENT,
OFFICE OF THE ASSISTANT SECRETARY,
WASHINGTON, D. C., *March 25th*, 1895.

Brig. Gen. R. N. Batchelder, quartermaster general, U. S. A.

SIR: You are hereby directed to pay to Messrs. James Stillman and Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, the sum of $150,000.00 in full for all claims of every nature and kind against the United States on account of the Fort Brown military reservation, except for the sum of $10,000, the balance of the appropriation made by Congress for the purchase of said reservation and payment of all claims for use and occupation thereof, which sum of $10,000 you will retain until said Stillman and Carson, as administrator, etc., shall furnish to the War Department satisfactory evidence that all claims against said reservation for taxes, dues or assessments have been fully discharged.

Very respectfully,

JOSEPH B. DOE,
Assistant Secretary of War.

1st endorsement.

WAR DEPARTMENT,
QUARTERMASTER GENERAL'S OFFICE,
WASHINGTON, *March 25th*, 1895.

Respectfully referred to the depot quartermaster, Washington, D. C. who will be governed in accordance with the within order of the Assistant Secretary of War, reference in this connection being made

to requisition for $160,000.00 *dollars* drawn in his favor March 9, 1895, and also to act of March 3rd, 1885.

130 R. N. BATCHELDER,
Quartermaster General, U. S. Army.

C
1143

2nd endorsement.

DEPOT QUARTERMASTER'S OFFICE,
WASHINGTON, D. C., *March 29th*, 1895.

Respectfully returned to the quartermaster general of the army; on March 26th, 1895, I prepared voucher in duplicate, in favor of James Stillman and Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, certified them, and had them receipted by Mr. John A. Garver, attorney. I then referred the voucher, together with the papers furnished me, to the Comptroller of the Treasury, requesting a decision as to the sufficiency of the voucher.

The vouchers and a copy of my latter, dated March 26th, 1895, are herewith.

I have this day received from the comptroller his decision, dated March 28th, 1895, which is also enclosed herewith.

All papers in the case are returned herewith.

C. R. BARNETT,
Quartermaster, U. S. Army, Depot Quartermaster.

685–1895
(4 inclosures)
(Original papers also herewith.)

3rd endorsement.

QUARTERMASTER GENERAL'S OFFICE,
131 WASHINGTON, D. C., *March 29th*, 1895.

Respectfully submitted to the honorable the Secretary of War, inviting attention to the enclosed decision of the comptroller and recommending that Major C. R. Barnett be directed to send an agent to Fort Brown with the deeds of the land and have them recorded; then to visit the U. S. district attorney of the district in which Fort Brown is located, and secure the certificate requested by the comptroller, and it is further recommended, that the Attorney General be requested to direct the district attorney to furnish a certificate in regard to any liens or incumbrances since March 6th; the recording of the deed and the payment of the taxes; that the claimants be notified of this action, in order that they make arrangements for the payment of the taxes that Major Barnett may meet the legal condi-

tions imposed by the Comptroller of the Treasury and make payment as directed by the Assistant Secretary of War.

R. N. BATCHELDER,
Quartermaster General, U. S. Army.

1143–Q. M. G. O.
14 enclosures.

3.

Office of the attorney of the United States for the western district of Texas. Robert U. Culberson, attorney; Duval West, assistant attorney.

DEPARTMENT OF JUSTICE, 4, 17, 1895.

Joseph B. Doe, Acting Secretary of War, Washington, D. C.

SIR: Confirming telegraphic advice to you of this date, I have the honor to transmit herewith, all conveyances and documents relating to the Fort Brown military reservation, that *was* sent me
132 under cover of your letter of March 30, 1895. These papers have been recorded, and the certificate of the clerk of the county court of Cameron county is attached to each.

Also find enclosed other documents as follows:

1. Certificate of payment of city taxes, to the amount of $3,095.32, and showing property clear of all taxes due the city of Brownsville.

2. Certificate of payment of State and county taxes to the amount of $5,005.70, and showing property clear of all taxes due the State of Texas and the county of Cameron.

3. Certificate of the U. S. district clerk at Brownsville, showing no pending suits, liens or judgments affecting said property.

4. Certificate of like character from the U. S. circuit clerk at Brownsville.

5. Similar certificate from the clerk of the county court of Cameron county.

6. Similar certificate from the clerk of the district court of Cameron county.

7. Bill of the clerk of the county court of Cameron county, in duplicate, amounting to $13.50, for recording conveyances and documents.

Very respectfully,

R. U. CULBERSON, *U. S. Att'y.*

(16 enclosures by reg. mail.)

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
WASHINGTON, D. C., *March 28th*, 1895.

C. R. Barnett, Esq., quartermaster, United States Army, Washington, D. C.

133 SIR: Yours of the 26th inst., enclosing voucher in favor of James Stillman and Thomas Carson, as administrator of the

estate of Maria Josefa Cavazos, deceased, for the purchase of Fort Brown reservation, together with sundry deeds and other papers, has been received.

You ask for my decision under paragraph 6 of section 8 of the act of July 31st, 1894, whether you are authorized to make payment upon said voucher. The voucher reads as follows:

"The United States to James Stillman and Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, Dr.

Washington, D. C., March 25th, 1895.	For the purchase of Fort Brown reservation, situated in Cameron county, State of Texas, containing about 358 8/10 acres of land, and to pay and extinguish all claims for the use and occupancy of said reservation by the United States, in accordance with act of Congress (sundry civil) approved March 3rd, 1885.....	$160,000.00
	Less amount withheld until said Stillman and Carson, as administrator, etc. shall furnish to the War Department satisfactory evidence that all claims against said reservation for taxes, dues or assessments have been fully discharged.....	10,000.00

Payment made by direction of the Assistant Secretary of War, under date of March 25th, 1895 ("C–1143 Q. M. G. O.)."

I certify that the above account is correct and just.

C. R. BARNETT,
Quartermaster, U. S. Army.

Received at Washington, D. C., the 26th day of March,
134 1895, of Major C. R. Barnett, quartermaster United States Army, the sum of one hundred and fifty thousand (150,00) ($150,000.00)* dollars and — cents, in full of the above account.

JAMES STILLMAN,
By JOHN A. GARVER, *Att'y.*
THOMAS CARSON,
As Administrator of the Estate of Maria Josefa Cavazos, Deceased,
By JOHN A. GARVER, *Att'y.*"

[* In pencil in copy.]

The appropriation referred to, and from which payment is proposed to be made, is found in the sundry civil appropriations act of March 3rd, 1885, 23 Stats., 507, and reads as follows:

"To enable the Secretary of War to acquire good and valid title for the United States to the Fort Brown reservation, Texas, and to pay and extinguish all claims for the use and occupancy of said reservation by the United States, the sum of one hundred and sixty thousand dollars: Provided that no part of this sum shall be paid until a complete title is vested in the United States; and the full amount of the price, including rent, shall be paid directly to the owners of the property."

The deeds which you enclose have been several times submitted to the Attorney General under the provisions of section 355 of the Revised Statutes for his opinion in favor of the validity of the title therein conveyed to the United States.

Attorney General Garland held that said deed was sufficient to vest in the United States a good and valid title to the tract of land known as the Fort Brown reservation. He said, however, in said opinion:

"This opinion assumes that the premises are now free from tax and other liens. Should the proposed transfer take place, it is advised that proper searches therefor be made before the purchase money is paid over; the above mentioned deeds and power
135 of attorney * * * being in the meantime put on record." 19 Op. A. G. 82.

On September 26th, 1893, Acting Attorney General Maxwell reaffirmed the opinion of Attorney General Garland above cited, and held that said deeds would at that time convey a good title to the United States, "excepting tax liens for city and county taxes due and unpaid, which amount in all to the sum of $7,103.87."

On March 9, 1895, Attorney General Olney reaffirmed the opinions of Attorney General Garland and Acting Attorney General Maxwell above cited, and said:

"* * * it appears that at the date thereof" (March 6–8 1895), "there were no judgments nor suits pending in either of said courts which affect the said property, nor any liens or incumbrances thereon of record, excepting liens for city and county taxes assessed upon the same and remaining unpaid, of which taxes the former amount to $3,095.32, and the latter to $5,005.70—making altogether the sum of $8,101.02."

On the same day, in another letter to the Secretary of War, Attorney General Olney held that James Stillman of New York, and Thomas Carson, of Brownsville, Texas, administrator *of* the will annexed of Maria Josefa Cavazos, deceased, were to be regarded as the owners of the premises, within the meaning of the appropriation above quoted from the sundry civil appropriation act of March 3rd, 1895, 23 Stats. 507.

On November 11, 1892, Attorney General Miller, in response to a request for an opinion from the Secretary of War, whether he was "authorized to accept the deeds offered to the Government by the owners of the property, and make payment to them, upon the terms proposed by their attorneys, namely, that part of the purchase money be withheld and retained by the Government until the property is discharged from taxes * * * mentioned in my letter to you of April 11th, 1892," held that the unpaid taxes, under the law
136 of the State of Texas, constituted a lien upon the land, and that payment could not be made in the manner proposed by the attorney for the owners of said property.

He said:

"'A complete title,' within the meaning of the aforesaid clause, is a good and valid title, one which is absolute and unencumbered; and by the same clause 'no part' of the sum therein appropriated is authorized to be paid until such title is vested in the United States. It seems to me that this provision of the statute forbids any payment whatever from that appropriation until the lien for said taxes is removed, and consequently that a payment upon the terms proposed would be unauthorized thereby."

This opinion of Attorney General Miller seems to be required by the language of the appropriation, and is concurred in by Attorney General Olney (he having so expressed himself orally to the Assistant Secretary of War and the comptroller in a conversation had between them today).

The same view of the appropriation clause above quoted was entertained by the assistant comptroller, and the comptroller before seeing the opinion of Attorney General Miller, or having the conversation above referred to with Attorney General Olney.

You are not, therefore, authorized to make payment of $150,000.00 to James Stillman and Thomas Carson, as administrator, etc., as provided for in the voucher.

If the taxes are paid and the deeds to the Government are placed on record, as suggested by Attorney General Garland, and the district attorney of the United States for the district in which the Fort Brown reservation is situated certified to those facts, and that since March 6th, no new liens or encumbrances have affected the title to the property conveyed by the deeds above mentioned, you would be authorized when so directed by the Secretary of War, to pay the full sum of $160,000.00 appropriated for the purchase of the Fort Brown reservation to James Stillman and Thomas Carson, as
137 administrator, etc., upon a voucher similar to that presented by you without, of course, the paragraph contained in the present voucher reserving the $10,000.00 for the payment of taxes, etc.

Your check should be drawn, however, "to James Stillman and Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased," which fact should be stated on the voucher in

order for you to receive credit by the auditor in the settlement of your account.

Respectfully yours,

R. B. BOWLER,
Comptroller.

All enclosures returned.
A true copy:
C. R. BARNETT,
Quartermaster, U. S. Army.

(692–1895) D. Q. M. O.)

WAR DEPARTMENT,
OFFICE OF THE ASSISTANT SECRETARY,
WASHINGTON, D. C., *April* 1, 1895.

Gen. R. N. Batchelder, quartermaster general, U. S. A.

DEAR SIR: Telegrams have been received from the tax collector of Cameron county, Texas, and the tax collector of the city of Brownsville, Texas, copies herewith enclosed.

You will therefore please prepare for the payment to James Stillman and Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, the sum of $10,000.00, being the balance due for the purchase of the Fort Brown military reservation, and all claims for the use and occupation of the same. This payment to be made upon receipt of information from the United States
138 district attorney, San Antonio, Texas, that the deeds have been recorded, and no new liens upon the property have been created since March 6, 1895.

The deeds referred to have been forwarded to the district attorney with directions to reply as indicated.

Very respectfully yours,

JOSEPH B. DOE,
Acting Secretary of War.

(Copies of telegrams herewith.)

Copy.

Telegram.

BROWNSVILLE, TEXAS, *March* 30/95.

The Hon. Dan'l S. Lamont, Secretary of War, Washington, D. C.:

I hereby certify that Thomas Carson has paid me five thousand and five dollars and seventy cents being the full amount of State and county taxes due on Fort Brown reservation and that said premises are discharged of all State and county taxes to date.

JAS. A. BROWN,
Tax Collector, Cameron County, Texas.

Copy.

Telegram.

BROWNSVILLE, TEXAS, *M'ch* 30, 1895.

Hon. Daniel S. Lamont, Sec. War, Washington, D. C.:

I hereby certify that Thomas Carson has paid me three thousand and ninety five dollars and 32c.; being the full amount of city taxes due on the Fort Brown reservation, and that said premises are discharged from all taxes due the city of Brownsville.

[SEAL.] SANTO VALDZ,
Tax Collector for the City of Brownsville.
S. J.

WAR DEPARTMENT,
OFFICE OF THE ASSISTANT SECRETARY,
WASHINGTON, D. C., *April* 25, 1895.

Gen. R. N. Batchelder, quartermaster general, U. S. A.

SIR: Referring to letters from this office dated March 25, 1895, and April 1st, 1895, respectively, and to the opinion of the Attorney General—copy enclosed—dated April 24, 1895, that complete title to the Fort Brown military reservation is now vested in the United States, you are hereby directed to cause to be paid to James
139 Stillman and Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, the sum of $160,000.00 in full payment for said reservation and for all claims of every nature and kind against the United States on account of said reservation, as provided in the act of Congress approved March 3rd, 1885 (23 Stats. 507)—said sum being the aggregate of the two sums named in the letter above referred to.

Very respectfully,

JOSEPH B. DOE,
Assistant Secretary of War.

(1 enclosure)

C. B. S.

Copy:
A. J. B.
F-9292-1885.

Endorsed.

1st endorsement.

"WAR DEPARTMENT,
QUARTERMASTER GENERAL'S OFFICE,
WASHINGTON, *Apr.* 25, '95.

Respectfully referred to the depot quartermaster, Washington, D. C., for compliance with directions of the Assist. Sec. of War, as contained in within letter.

R. N. BATCHELDER,
Quartermaster Gen., U. S. A.

$\frac{E}{1143}$; 1 enclosure.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., *April* 24, 1895.

The Secretary of War.

SIR: I return herewith the deed and other papers which accompanied a letter received from your department, dated the 22nd inst., relating to the Fort Brown military reservation in Texas, and in reply to the inquiry contained in said letter, I have the honor to state that in my opinion a complete title to said reservation is, by virtue of said deed, now vested in the United States—excluding, of course, that part of the premises (about 25 acres) which is used for a national cemetery, the title to such part having been acquired by the United States a long time before the execution of said deed, by condemnation proceedings instituted in 1872, under the act of Congress of February 22, 1867, chap. 61.

I am, sir, very respectfully,

RICHARD OLNEY,
Attorney General.

(Encl.)

140 In the United States Circuit Court for the Western District of Texas.

C. B. COMBE, Ex'r,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

UNITED STATES OF AMERICA,
State of Texas, County of Bexar.

Before the undersigned authority on this day personally appeared S. J. Brooks, receiver in the above entitled cause, who being by me duly sworn deposes and says that on March 10th, 1898, he addressed a registered letter to Mr. James Stillman, at New York city, N. Y., demanding that he turn over to him the fund of $160,000.00, involved in above cause, in obedience to the order heretofore entered herein; that said letter was received by James Stillman on March 14, 1898, as appears from the registry receipt therefor.

Affiant further says that on May 18th, 1898, he addressed a similar letter to Thomas Carson, at Brownsville, Texas, demanding that said fund be turned over to him as such receiver, but he has received no reply from either said Stillman or Carson, and they have not turned over said fund to him.

S. J. BROOKS.

Sworn to and subscribed before me this 25th day of May, A. D. 1898.

[SEAL.]

P. H. SWEARINGER,
Notary Public, Bexar County, Texas.

NEW ORLEANS, LA., *April* 19, 1898.

C. L. Bates, San Antonio:

Rehearing in Carson *versus* Combe denied

J. M. McKEE.

141 United States Circuit Court, Western District of Texas, Brownsville Division.

C. B. COMBE, Executor,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

WESTERN DISTRICT OF TEXAS,
State of Texas, Bexar County.

Before the undersigned D. H. Hart, clerk of the circuit court of the United States for the western district of Texas, this day came personally C. L. Bates, who after being by me duly sworn, deposes and states as follows, towit: That he is one of the counsel for the plaintiff in the above stated cause: that he has read the foregoing complaint and information and knows the contents thereof; that he has carefully inspected the record in this cause and that the allegations of said complaint and information based upon the said record are true in substance and in fact; that he is informed and believes that the other allegations contained in said complaint and information are true. That he makes this affidavit as the counsel for the plaintiff because the plaintiff is not present and lives in the city of Brownsville, Texas, and that since he is counsel for plaintiff, he has determined upon the course to be pursued in the alleged contempt, that there is not sufficient time, as affiant believes to send the complaint and information to the plaintiff and have it sworn to and returned here in time to prevent unnecessary delay and to secure the action of the court during its present term. Affiant says that he attaches hereto the affidavit of the receiver, S. J. Brooks, Esq., as to certain facts alleged and within his peculiar knowledge.

C. L. BATES.

Sworn to and subscribed before me this 26th day of May, 1898.
[SEAL.] D. H. HART, *Clerk.*

Endorsed: No. 21 In equity. U. S. circuit court, western dist. Texas, Brownsville division. C. B. Combe, executor, *vs.* James
142 Stillman, *et al.* Complaint and information against James Stillman and Thomas Carson for contempt. Filed this 27th ay of May, 1898. D. H. Hart, clerk. by A. Grosenbacher, deputy.

143 *Orders Setting Down for Hearing Pleas to the Jurisdiction.*

C. B. COMBE, Ex'r,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Upon the request of counsel for plaintiff: It is ordered that the pleas of defendants James Stillman and Thomas Carson to the jurisdiction of the bill be and they are hereby set down for argument on their legal sufficiency at 10 o'clock a. m. on Tuesday July 5, 1898, in the United States circuit court room at Austin, Texas.

Ordered this — day of —— A. D. 1898.

(Not signed)

Attest: D. H. HART, *Clerk.*

Endorsed: U. S. circuit court, western district of Texas, Brownsville div. C. B. Combe ex'r, *vs.* James Stillman, *et al.* No. 21. In equity. Order setting down for hearing on their legal sufficiency pleas to the jurisdiction of defendants Carson and Stillman. Filed June 6th, 1898. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

144 *Writ to Serve Copy of Order of Court on Thomas Carson in His Own Right.*

In the United States Circuit Court for the Western District of Texas, at Brownsville.

The President of the United States of America to the marshal of the western district of Texas, Greeting:

You are hereby commanded to serve Thomas Carson, in his own right, Brownsville, Texas, with the accompanying certified copy of order of court requiring the appearance of the defendants James Stillman and Thomas Carson, as administrator and in his own right, at Austin, Texas, on July 5, 1898, to show cause, if any they can, why they should not be adjudged guilty of contempt for disobedience of a certain writ of injunction issued and order entered July 15, 1897, in case No. 21 equity, and styled, C. B. Combe, executor, *vs.* James Stillman, *et al.*

Herein fail not and due return of this writ make.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of the circuit court of the United States for the western district of Texas, at Brownsville, Texas, this 6th day of June, A. D. 1898.

[SEAL.] D. H. HART,
Clerk of said Circuit Court,
By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21 equity, United States circuit court, western district of Texas, at Brownsville. C. B. Combe, executor, *vs.* James Stillman, *et al.* Writ to serve copy of order of court on
145 Thomas Carson. Issued June 13, 1898. D. H. Hart, clerk, C. F. Tighlman, deputy. Returned and filed June 14, 1898. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

Marshal's Return.

Received this writ on the 14th day of June, 1898, and I executed the same on the 14th day of June, 1898, by delivering to Thomas Carson in person at Brownsville, Texas in my district, the accompanying copy *in* interrogatories and notice named in this writ, certified by the clerk of this court.

GEO. L. SIEBRECHT,
U. S. Marshal, W. D. T.,
By JOHN M. HAYNES, *Deputy.*

Fee	$2.00
Mileage	
Actual expenses	
	$2.00

146 *Writ to Serve Copy of Order of Court on Thomas Carson, Administrator.*

In the United States Circuit Court for the Western District of Texas, at Brownsville.

The President of the United States of America to the marshal of the western district of Texas, Greeting:

You are hereby commanded to serve Thomas Carson, as administrator, Brownsville, Texas, with the accompanying certified copy or order of court, requiring the appearance of the defendants James Stillman and Thomas Carson, as administrator, and in his own right, at Austin, Texas, on July 5th, 1898, to show cause, if any they can, why they should not be adjudged guilty of contempt for disobedience of certain writs of injunction issued and order entered July 15, 1897, in case No. 21 equity, and styled C. B. Combe, executor, *vs.* James Stillman, *et al.*

Herein fail not and due return of this writ make.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the United States, and the seal of the circuit court of the United States for the western district of Texas, at Brownsville, Texas, this sixth day of June, A. D. 1898.

D. H. HART,
Clerk of said Circuit Court,
By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21 equity. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, executor, *vs.* James Stillman, *et al.* Writ to serve copy of order of court on Thomas
147 Carson, administrator. Issued June 13th, 1898. D. H. Hart, clerk. by C. F. Tighlman, deputy. Returned and filed June 14, 1898. D. H. Hart, clerk. by Charles F. Tighlman, deputy.

Marshal's Return.

Received this writ on the 14th day of June, 1898, and I executed the same on the 14th day of June, 1898, by delivering to Thomas Carson in person at Brownsville, Texas, in my district, the accompanying copy of interrogatories and notice named in this writ, certified by the clerk of this court.

GEO. L. SIEBRECHT,
U. S. Marshal, W. D. T.,
By JOHN M. HAYNES, *Deputy.*

Fee	$2.00
Mileage	
Actual expenses	
	$2.00

148 *Writ to Serve Copy of Order of Court on Stillman.*

In the United States Circuit Court for the Western District of Texas, at Brownsville.

The President of the United States of America to the marshal of the southern district of New York, Greeting:

You are hereby commanded to serve James Stillman, New York, N. Y., personally, with the accompanying certified copy of order of court, requiring the appearance of the defendants James Stillman and Thomas Carson, as administrator, and in his own right, at Austin, Texas, on July 5, 1898, to show cause, if any they can, why they should not be adjudged guilty of contempt for disobedience of certain writs of injunction issued and order entered July 15th, 1897, in case No. 21 equity, and styled, C. B. Combe, executor, *vs.* James Stillman, *et al.*

Herein fail not and due return of this writ make.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of the circuit court of the United
[SEAL.] States, for the western district of Texas, at Brownsville, Texas, this 10th day of June, A. D. 1898.

D. H. HART,
Clerk of said Circuit Court,
By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21 Equity. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, executor, *vs.* James Stillman, *et al.* Writ to serve copy of order of court on James Stillman. Issued June 10th, 1898. D. H. Hart, clerk, by
149 Charles F. Tighlman, deputy. Returned and filed 23rd Dec'r, 1898. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

I hereby certify that on the 16th day of June, at the city of New York, in my district, I personally served the within mentioned certified copy of order of court requiring the appearance of the within named defendant James Stillman at Austin, Texas, on July 5th, 1898, in the United States circuit court, to show cause, etc., by delivering to and leaving with him said certified copy of order.

WILLIAM HENKEL,
U. S. Marshal, S. D. N. Y.

J. E. D.

Dated New York, June 16, 1898.

150 *Answer of Defendant Thomas Carson to Rule to Show Cause, etc.*

C. B. COMBE, Executor, etc., }
vs.
JAMES STILLMAN ET AL. }

Now comes Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, and individually, and replying to the rule to show cause why he should not be punished for an alleged failure to pay a certain alleged fund into court and limiting his appearance to this hearing and reserving and saving all right and benefit to file hereafter all necessary and proper pleadings in said cause says, that the court ought not to hear and grant the order of contempt in this cause as prayed for in the motion of complainant for this:

1. It appears upon the face of the original bill filed herein that this court has no jurisdiction of this cause, because there is no diversity of citizenship, the complainant herein being a resident citizen of Texas at the time of the filing of his bill, and this defendant being a resident citizen of the State of Texas at said time.

2. Because it appears upon the face of complainant's bill, that same is not dependent or ancillary to the alleged suit at law formerly pending in this court, entitled, "Heirs of Miguel Salinas, *vs.* Wm. L. Kellogg," No. 248; but that said suit at law has heretofore been finally disposed of and all matters at issue therein finally adjudicated.

3. Because the alleged agreement to arbitrate set out in complainant's bill was a separate and independent agreement between certain parties to said suit at law, not a file paper in said suit nor any part of the decree rendered in said suit at law; and complain-

ant's action for an alleged breach of said agreement has no connection with and is in nowise dependent upon nor ancillary to
151 said suit at law.

4. Because it appears upon the face of complainant's bill, that the said alleged fund is not now and has never been in the custody of this court, and by the terms of said agreement was never intended to be paid into the custody of this court.

5. Because it appears upon the face of said bill that this defendant as administrator of the estate of Maria Josefa Cavazos, deceased, and James Stillman, were authorized to collect from the United States Government said alleged fund, and, therefore, as soon as said fund was collected it became a part of the assets of the estate of said Maria Josefa Cavazos, deceased, and this defendant would be without authority to pay same into the custody of this court, and this court without jurisdiction to compel him as such administrator to pay such fund, or any portion thereof, into this court, as the custody of such portion of said fund as belonged to the estate of Maria Josefa Cavazos, deceased, is alleged in said bill to have been in the custody of this defendant as such administrator at the time of the filing of the bill, and, therefore, in the custody of the probate court in which such estate is being administered.

6. Because it appears upon the face of complainant's bill filed herein, that this defendant is insolvent and has no property in this State, except such as is by law exempt from seizure and sale under execution or attachment, and, therefore, is unable to pay into this court any of said fund, if he had collected same, and cannot be held under contempt proceeding to do that which he is unable to do according to the averments of complainant's bill.

7. Because it appears upon the face of said bill and exhibits thereto attached that the complainant Combe has no authority to file said bill and prosecute this action, as he was appointed joint executor with one B. O. Hicks, of the estate of Stephen Powers, deceased, who duly qualified, and cannot therefore prosecute this action
152 alone; and because it further appears from said bill and the exhibits thereto that by the will of Stephen Powers, deceased, all of his property was disposed of and passed to his devisees and legatees subject only to the debts due by said Stephen Powers, and there is nothing in complainant's bill to show that any of said debts are unpaid, and, therefore, said Combe as such executor is without authority to file said bill or prosecute this cause.

8. Because it appears from the records in this cause, that there is now pending herein and undisposed of pleas to the jurisdiction of this court filed by this defendant and by his co-defendant James Stillman, and proceedings for contempt cannot be disposed of nor this defendant held in contempt until the question of jurisdiction is finally disposed of and said pleas finally heard and determined.

9. Because it appears from the record herein that no part of the said one hundred and sixty thousand dollar fund was ever at any time collected or received by this defendant, and that he has never

had said fund or any portion thereof in his possession, custody or control; and that he cannot be required, therefore, to do that which he is unable to do.

10. Because it is apparent from complainant's bill and the record herein, that the alleged fund of one hundred and sixty thousand dollars has never been in the possession or custody of this court, and if defendant under agreement between the parties collected any portion of said fund, either as administrator or individually, and misappropriated same, or any portion of same, complainant can only recover same by proper writs of execution after judgment and cannot enforce the payment of a litigated fund into a court that has never had said fund in its possession and no jurisdiction to control the payment or distribution of said fund by any of the parties authorized to collect said fund; and the writ of contempt cannot be made to serve the purpose of collecting a debt by imprisonment forbidden by the law of the land.

Should the foregoing demurrer and exceptions be over-
153 ruled, then this defendant for answer says:

That no part whatever of the one hundred and sixty thousand dollars referred to in the bill of complaint herein and the rule for contempt and the motion for contempt has ever at any time been received by this defendant, either individually, or as administrator of the estate of Maria Josefa Cavazos, deceased, or held under his control or direction or in his possession. That for nearly two years he attended in the city of Washington attempting to collect said sum from the Government of the United States, but that he did not succeed in so doing, and being unable to remain longer in Washington he finally executed a power of attorney to one John A. Garver of New York city, a member of the firm of Shearman & Sterling, attorneys in the city of New York, authorizing him to take such steps as might be necessary to collect said fund. That he could not alone either collect or receipt to the United States for said sum named, because the money was payable to his co-defendant Stillman and this defendant as administrator aforesaid jointly, and the said John A. Garver was at the same time acting as attorney in fact for said Stillman in the premises. That said one hundred and sixty thousand dollars, this defendant is informed and believes, was finally collected by the said John A. Garver, attorney as aforesaid, but not until some ten years after the act of Congress of March — 1885, making an appropriation for the payment of said one hundred and sixty thousand dollars. That in the meantime said arbitration agreement had become ineffective by reason of the death of one of the arbitrators, Gen. Waul, and the refusal to act of one of the other arbitrators, Judge Culberson; and the parties authorized to name other arbitrators by said agreement had failed so to do, and this defendant and said James Stillman under the terms of said arbitration agreement, were neither authorized to appoint substitute arbitrators. That it, therefore became necessary for this defendant and his co-defendant Stillman, this defendant acting as ad-

ministrator as aforesaid, to continue their efforts to col-
154 lect said fund; and that this defendant living a great distance from Washington was, as heretofore stated, unable to constantly attend in said city to push the collection of said fund and made the appointment of said John A. Garver as his attorney as aforesaid. That, as hereinbefore stated, no portion of said fund when collected was ever paid over to this defendant by the said John A. Garver or by the said James Stillman, and that he has endeavored to obtain a settlement with said Garver and a distribution of said fund and has visited the city of New York for that purpose and remained there for some time, but that owing to the litigation brought by H. E. Woodhouse and others, he was wholly unable to do so and was unable to obtain from said Garver any possession, control or disposition of the said fund, or any part of it, and has not been able to do so since without any fault or omission on his part in the premises.

That he is informed and verily believes it to be true that neither the complainant herein or the said Stephen Powers or any of the heirs, devisees or legatees have ever had any title to any portion of the said fund, and that his co-defendant Stillman has never been recognized, nor has this defendant, any title in the said above named parties to any portion of said fund.

Further answering, he says, that it is shown by the record herein that out of said fund of one hundred and sixty thousand dollars, $8,101.02 was paid out for taxes upon said Fort Brown property, and that said payment was made as a necessary condition precedent for obtaining the money appropriated by the Government. That under the agreement contained in the record $20,000 more was to be paid out for expenses, and this defendant is informed and believes that by a subsequent agreement between all parties to the original agreement a further expenditure of $25,000.00 was authorized to be made as expenses necessarily incident upon the collection of said fund, and was actually paid out; that other and additional expenses were incurred and paid out in connection with the collection of said fund, and that the actual amount, after
155 the deduction of said expenses collected by the said John A. Garver was the sum of about $106,000.00, and that the title of the said Stillman and this defendant as administrator as aforesaid, to one-half of said balance has never been contested as far as this defendant is aware by any one, and that the only portion of said fund, so this defendant is informed and believes, that is in re-lity in dispute is one-half of the said balance, towit: the sum of about $53,000.00, and that therefor- this defendant should not in any event be required to pay into the custody of this court or to pay over to this receiver any greater sum than the said sum of $53,000 00.

But this defendant further says, that, as is hereinbefore fully shown, he is utterly unable to get possession of said fund or to control it in any manner whatsoever, and that his failure to pay same into the custody of this court is not due to any intention or purpose to dis-

obey any of the orders of this court, but because of his absolute inability to make any such payment. That he would have no right to demand of the said Garver, or of the said Stillman, any large amount of said money than was properly due the estate of Maria Josefa Cavazos, deceased, and that in order to secure said sum, his only proceeding, as he is informed and believes, is a suit against the said Garver or the said Stillman, both of whom are resident citizens of the city, county and State of New York, and which said suit would therefore, have to be brought by him in said State of New York; that in addition to this, as he is informed and believes to be true, he, as an administrator appointed under the courts of Texas, could not bring such suit in the courts of New York; and that in order for him to have any standing in the courts of said State, for the purpose of suing for the recovery of any portion of said fund belonging to the said estate, he would have to take out letters of administration over the said estate in the said State of New York. He further says that he is informed and believes and charges it to be true, that there are unsettled differences between the said James Stillman and
156 the said estate of Maria Josefa Cavazos, deceased, growing out of a number of years of business transactions, all of which differences would have to be settled before it could be ascertained definitely whether the said estate of Maria Josefa Cavazos was entitled to any portion of the said fund as against the said James Stillman.

He further avers that he could not get the process out of this court for the purpose of reducing to the custody of this court said fund, because he is informed and believes and charges it to be true, that this court is without jurisdiction to issue such process, and that, therefore, it would be a breach of his trust as administrator, as aforesaid, to aid in reducing to the custody of this court and placing in the hands of its receiver said fund or any portion thereof, when this court would not have jurisdiction to administer same and its entire proceedings in that regard might be null and void, and all actions of its receiver with reference to any of said fund equally null and void.

Further answering this defendant says that he is informed and believes and charges it to be true that complainant herein is without authority to bring this suit and without interest in the subject matter thereof, for this:

Under the will of Stephen Powers all of his property was disposed of by specific bequests and devises, and B. O. Hicks and complainant appointed joint executors, and both qualified as such. That said will was probated on or about the 20th day of March, 1882, and that since then all of the debts of said estate have been paid off by said executors and all of the property of said estate partitioned among the legatees and devisees under said will, as will more fully appear by copy of partition hereto attached and made a part hereof. That all necessity for further administration of said estate had therefore ceased at and before the institution of this suit, and all of the prop-

erty of said decedent had become absolutely vested in said legatees and devisees, and passed out of and beyond the control or
157 management of either of said executors.

Wherefore, defendant says, that he has done nought in contempt of this court; that he has complied as fully as he could with all orders and decrees of this court, and he asks to be hence discharged with his costs.

THOMAS CARSON.

THE STATE OF TEXAS, }
County of Cameron. }

Before me, the undersigned authority, personally appeared Thomas Carson as administrator of the estate of Maria Josefa Cavazos, deceased, and individually, and being duly sworn, says that he has read the foregoing answer and understands same, and that the same is true in substance and in fact where the matters and things therein stated are stated of his own knowledge and where the matters and things therein stated are stated upon information and belief, he believes the same to be true.

THOMAS CARSON.

Sworn to and subscribed before me by Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, and individually on this 25th day of June, A. D. 1898.

[SEAL.] D. H. HART, *Clerk*,
By CHAS. F. TIGHLMAN, *Deputy*.

Endorsed: No. 21 Equity. C. B. Combe, executor, *vs.* James Stillman *et al.* Answer of def't Thomas Carson to rule to show cause, etc. Filed July 5, 1898. D. H. Hart, clerk.

158 In District Court, 28th Judicial District, Fall Term, A. D. 1891.

CHARLES B. COMBE ET AL. }
vs. } No. 1606.
ANNETTE P. HICKS ET AL. }

Certified Copy of Final Decree.

THE STATE OF TEXAS, }
County of Cameron. }

Be it remembered, that on this 7th day of September, A. D., 1891, at 10 o'clock, a. m., there was begun and holden a regular term of the district court in and for the county of Cameron, in the 28th judicial district of the State of Texas, at the court house, in the city of Brownsville,—said day being the first day of the term fixed by law for holding said term, to-wit:—the first Monday in September.

Present: Hon. John C. Russell judge. D. McNeil Turner, dist. att'y. Louis Kowalski, clerk; and M. L. Browne, sheriff.

The court was opened by proclamation of the sheriff pursuant to law, when on Friday, the second day of October, A. D., 1891, the same being a regular day of this term, among others, the following proceedings were had, to wit:—

* * * * * * *

FRIDAY, *October 2nd, A. D.* 1891—9 o'clock a. m.

The court met.

Present: As before.

The minutes of yesterday were read and approved, when the court resumed proceedings as follows, to-wit:—

CHARLES B. COMBE ET AL.
vs.
ANNETTE P. HICKS ET AL. } 1606. Suit for Partition.

And now on this the 2nd *second* day of October, A. D., 1891, this cause came on for trial in its regular order upon the docket and thereupon came each and all of the respective parties plaintiff and
159 defendant and announced themselves ready for trial and waived a jury and submitted the cause to the court upon the law as well as the fact- and each and all of the respective parties hereto plaintiffs and defendants consenting thereto in open court, it is now here by the court ordered, adjudged and decreed. that the plaintiffs and defendants, save and except Amapara Garcia de Garcia and her husband Fructuoso Garcia are the owners in common of the lands sought to be partitioned herein and as set out and described in plaintiffs' original and supplemental petitions herein which are as follows, to-wit:—thirty-three thousand four hundred and ninety-three and four-sevenths (33,493$\frac{4}{7}$) acres of land, situated and being in the county of Cameron and State of Texas, and being part of that certain tract or grant of land about thirteen (13) leagues, originally granted by the Spanish government in America to B. and E. Fernandez, and commonly and generally and especially known as and called, the "Concepcion de Carricitos" tract, or grant of land, the said whole grant being confirmation number ten (10) for the said county of Cameron, under and by virtue of the act of confirmation of the legislature of the State of Texas, approved February 10th, A. D. 1852, and entitled,—"An act to relinquish the right of the State to certain lands therein named," the said whole grant fronting on the Rio Grande river and extending back in a northerly direction to the Arroyo Colorado for quantity, the said thirty-three thousand four hundred and ninety-three and four-sevenths (33,493$\frac{4}{7}$) acres of the said whole grant, now herein sought to be partitioned, being the same land partitioned and set apart in severalty to the heirs of said St-phen Powers, deceased, in the general partition of said whole grant in cause "No. 1346," "B. O. Hicks, executor, etc.,

et als., vs. Anastacio Treviño, *et als.*," in the district court of Cameron county, by final decree rendered in said court at the September term thereof, A. D., 1884.

Second. Two (2) porciones of land in the county of Hidalgo and State of Texas, immediately adjoining each other and containing in the aggregate twelve thousand and seventy (12,070) acres of land in one body, fronting upon the Rio Grande river and extending back from said river, between parallel lines, about twenty-five thousand varas (25,000) in a northerly direction for quantity. The said porciones being respectively, porcion number — (—) of the ancient jurisdiction of Reynosa, originally granted by the Spanish
160 government in America to Hermenejildo Ochoa, containing five thousand four hundred and twenty-eight (5,428) acres of land; said porcion being survey No. 54, for the said county of Hidalgo, and being confirmation number — (—), for said county of Cameron; 2nd, porcion number — (—), of the ancient jurisdiction of Reynosa, originally granted by the Spanish government in America to José Francisco de la Garza, containing six thousand six hundred and forty-two (6,642) acres of land and survey No. 53, for said county of Hidalgo, and also being confirmation No. 36, for said county of Cameron.

Third. The following described real estate situated and being in the county of Cameron and State of Texas, and forming part of the city of Brownsville, according to George Lyons map and survey of said city, to-wit: one-half (½) of lot number two, (2), in block number fifty-nine, (59), fronting twenty-five (25) feet upon Elizabeth street and extending back between parallel lines one hundred and twenty (120) feet to an alley in the rear for quantity; 2nd. Lot number three (3) in block number fifty-one, (51), fronting fifty (50) feet upon Elizabeth street, and extending back one hundred and twenty (120) feet between parallel lines to an alley in the rear for quantity; 3rd. Lot number seven (7), in block number one hundred and sixteen, (116), fronting fifty (50) feet on Jefferson street and extending back between parallel lines one hundred and twenty (120) feet to an alley in the rear for quantity; 4th. Lots number seven and eight (7 and 8) in block number ninety-five, fronting fifty (50) feet each upon Adams street and extending back between parallel lines one hundred and twenty (120) feet to an alley in the rear for quantity; 5th. Lots number eight and nine, (8 and 9) in block number ninety-one, (91) fronting fifty (50) feet each upon Adams street, and extending back between parallel lines one hundred and twenty (120) feet to an alley in the rear for quantity.

That all of said lands are held and owned in the following proportions, or shares, to wit:—

First. 1st. To the plaintiffs Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe as children and sole heirs and devisees of Mrs. Kate M. Combe, deceased, one equal undivided fourth ¼ thereof.

Second. 2nd. To the plaintiff, Mrs. Agnes A. Browne, wife
161 of James A. Browne, one equal undivided fourth (¼) thereof.

Third. 3rd. To the defendant, Mrs. Annette P. Hicks, one equal undivided fourth (¼) thereof.

Fourth. 4th. To the defendant, Miss Frances E. Powers, one equal undivided fourth (¼) thereof.

Fifth. 5th. To the plaintiff, Mrs. Ampara Garcia de Garcia, and her husband, Fructuoso Garcia *own* no interest whatever in said lands.

That all said lands are subject to be partitioned among the said respective owners thereof in the said respective proportions of ownership as hereinbefore set out, and should be partitioned among them in said equal proportions. That inasmuch as the said respective parties have since the institution of this suit agreed upon commissioners of partition and said commissioners have filed their due and full report of partition, and have duly appointed a surveyor who has surveyed each respective share of said lands as partitioned by said commissioners in and by their said report, the field notes of said shares accompanying said report, therefore no necessity exists for the appointment of commissioners of partition, or a surveyor herein.

It is therefore now hereby ordered, adjudged and decreed, that the said report of partition of said commissioners of partition be and it now hereby is in all things approved and confirmed.

Share No. 1. And it is now here further ordered, adjudged and decreed that share (No. 1) number one of said land of the Concepcion de Carricitos tract as partitioned and set apart in said report be and the same is now hereby allotted assigned partitioned and set apart in severalty to the plaintiff Mrs. Agnes A. Browne in four different tracts or portions by metes and bounds as follows, to-wit:—

Portion No. 1. Portion number one (1) share number one, (1), two hundred and eighty-five and four-sevenths (285 4/7) acres as one undivided seventh of private surveys Nos. 426 and 450, of Cameron county, the land contained within the lines of the following survey being 1999 acres.

Beginning at a post set in base line in partition of said "Concepcion de Carricitos" for N. E. corner of private survey No. 426, and running thence, south at 2075 varas main road Brownsville to Rio Grande City, at 2222 varas a fence at 2922 varas a stake on bank of Rio Grande at N. point of sharp bend. Thence up river with its meanders S. 37½° W. 526 varas, S. 21¼° E. 884 varas to a stake on bank. Thence south at 188 varas a post, at 488
162 varas a marked palo blanco, at 890 varas willows, and at 968 varas a stake on bank of river. Thence up the river with its meanders west 420 varas. Thence north at 170 varas entered a grove of palo blancos, and at 470 varas a stake on bank. Thence up the river with its meanders N. 29° E. 400 varas north 300 varas, N. 46° W. 270 varas to corner adjoining lands of Anstacio Treviño heirs. Thence north at 195 varas a huisache marked ≡/≡ at 299

varas an elm marked bears E. ½ vara, at 680 varas an ebony stump marked and entered timber, at 965 varas a post on bank of resaca, at 1283 varas a fence, at 1585 varas main road, at 2335 left another resaca, and entered jungle, at 2455 varas an anacahuita in line at 2691 varas a large mesquite in line marked ≡/≡ at 3465 varas old telegraph road, at 3670 varas road to "La Feria" and at 3885 varas to a post in base line. Thence with W. line of private survey No. 450, constituting a portionlof this share, N. 1/¼ E. 8547 varas to the N. W. corner of this share on the south bank of the Arroyo Colorado. Thence down said arroyo with its meanders, N. 65¼° E. 138 varas, N. 66½° E. 370 varas, north 110 varas, N. 31° E. 120 varas, N. 77¾° E. 605 varas N. 2½° E. 600 varas N. 73¼° E. 349 varas S. 81¼° E. 316 varas to a stake on bank from which a mesquite marked X bears N. 82° W. 7½ varas. Thence with E. line of said private survey No. 450, S. 9° W. at 1012 varas an elm in bottom of gully, at 1110 varas, on summit of hill, at 1250 varas road to "La Yndia," at 2840 varas resaca and road to La Feria, at 3580 varas a resaca, at 3970 varas a resaca, at 5130 varas Hynes road in Cabritos prairie, at 7300 varas a road, at 9050 varas a resaca, at 9890 varas Laguna de Los Olmos, and at 9930 vrs. to the place of beginning.

Portion No. 2. Portion number two (2) share (No. 1) number one, five thousand three hundred and fifty-two (5352) acres, including private surveys Nos. 434 and 437, and a portion of number 433, the remainder of No. 433, being situated in a "banco" or "cut-off" on the Mexican bank of the river and allotted with this share as portion No. 3, and includes ranches of "La Panola" and "Higueras."

Beginning at a post on base line for N. E. corner of private survey No. 434, from which post a mesquite marked ≡ bears N. 74° W. 14¼ varas, and a large mesquite marked X bears N. 34½° E. 14¼ varas, and running thence south at 360 varas old telegraph
163 road, at 996 to 1056 varas a deep gully, at 1366 varas main road from Brownsville to Rio Grande City, at 1451 varas an opening, at 1706 varas an ebony on E. marked ≡ at 2156 varas an opening at 3176 varas an elm on E. and left flat, at 3500 varas a road, at 3516 varas an estero, at 3675 varas left same, at 4002 varas on tall elm, at 4456 varas a post, and at 4656 varas a stake on bank of Rio Grande. Thence up the river with its meanders S. 89° W. 364 varas to the S. E. corner of private survey No. 433, and continuing up river meanders, S. 66¾° W. 598 varas, S. 88½° W. 80 varas to the S. W. corner of this share in bed of old estero, "La Sierrita." Thence up center of said estero with its meanders N. 7° W. 1290 varas, N. 12½° W. 640 varas, N. 20¼° W. 500 varas, west 23 varas. Thence leaving estero north at 110 varas a stake on bank, at 295 varas an ebony marked ≡ bears W. 1½ varas at Rancho "La Puerta," at 658 varas bank of estero "Las Tranquitas," and at 715 varas to bed of said estero. Thence up middle of said estero, N. 41° E. 298 varas, N. 23° W. 360 vs. N. 80° W. 55 vs. Thence leaving estero north at 84 varas a stake on bank of estero from which a willow marked ≡ bears W. 5½ varas, at 332 varas fence S. of main road at 949 varas a

large mesquite bears east 1½ varas, at 1052 varas road to Higueras ranch, at 1252 varas left timber, and at 1432 varas to a post in base line for N. W. corner of private survey No. 433 and S. W. corner of private survey No. 457, from which post a mesquite marked V bears N. 52½° W. 11 varas. Thence with W. line of said private survey No. 457, N. 30½° E. at 791 varas a mesquite bears E. 1 vara marked ═ at 1400 varas a road, at 1630 varas an ebony on S. bank of resaca, at 1800 varas an ebony on N. bank of resaca, at 2030 varas road from Higueros to La Feria, at 2675 varas a dry resaca, at 2900 varas resaca, at 3150 varas resaca, at 4150 varas to 4560 varas a pond, at 5000 varas a stake in "Nopalera," at 5773 varas, entered a small prairie, at 6350 varas entered timber, at 7525 varas a mesquite marked ═ on east, at 7930 varas entered Potrero del Nopal, at 8082 varas left same, at 8380 varas a forked mesquite on east marked ═, at 9760 varas a marked mesquite on W. at 10200 varas entered resaca at 10940 varas entered same resaca, at 11420 varas same resaca 50 varas W. of Sauci to pond, at 12523 varas entered Abra de la Espada, at 12645 varas mesquite marked ═/═ at 13520 varas left La Espada, at 14370 varas Uña de Gato ═ on W., at 15450 varas road to La Tasa and marked mesquite E. ═ at 15900 varas, entered open ground at
164 16712 varas post on bank, at 16740 varas a mesquite ═/═ at 16790 varas to bank of Arroyo Colorado. Thence down the Arroyo Colorado with its meanders, S. 87½° E. 308 varas, N. 5¾° E. 440 varas, N. 73° E. 356 varas, N. 60¼° E. 474 varas N. 81° E. 974 varas to Palmito ranch, N. 44½° E. 536 varas to N. E. corner of this share on bank of the arroyo in field. Thence with E. line of said private survey No. 457, S. 31° W. at 40 varas a palo blanco marked ═ at 183 varas, post on top of bank from which an ebony marked ═ bears S. 78¾° E. 20 varas and an ebony marked ═ X bears S. 3° W. 28½ varas, at 1660 varas an ebony in line, at 1870 varas a road, at 3820 varas road to La Tasa, at 4010 varas roads, at 5662 varas a mesquite Abra Cuates, at 6850 varas resaca at 7510 varas left resaca, at 10829 varas large mesquite 1 vara E. marked ═ at 12930 varas an opening, at 14542 varas triple ebony E. at 15470 varas main resaca, at 16430 varas Abra La Silla, at 17850 varas road to Higueras, and at 18630 varas to the place of beginning.

Portion No. 3. Portion number three, (3) share number one (1) twenty-two (22) acres, being a portion of private survey No. 433. Beginning at a point on S. bank of the Rio Grande river, where an extension due south of the W. line of portion number two, (2) of this share strikes same, and running thence across "banco" south 901 varas N. 807° E. 30 varas to river bank. Thence with river meanders N. 13¾° E. 927 varas. Thence with line of banco W. 250 varas, to the place of beginning.

Portion No. 4. Portion number four, (4), share number one, (1). Three thousand nine hundred and forty-four (3944) acres being a portion of private survey No. 461, the remainder of said survey

being allotted and distributed to portion 3, of share No. 2, and to shares Nos. 3 and 4.

Beginning at a point in center of Arroyo Colorado from which an ebony on S. bank marked with chops and blaze and N. E. bears S. 12¼° W. 46 varas, said starting point supposed to be at the N. W. corner of the Espiritu Santo grant and N. E. corner of Concepcion de Carricitos grant, and running thence up said arroyo with its meanders, N. 55½° W. 300 varas N. 27¾° W. 695 varas N. 55° W. 300 varas S. 72° W. 290 varas S. 54½° W. 530 varas S. 74½° W. 1000 varas, S. 45¾° W. 680 varas, S. 15½° W. 265 varas S. 38½° E. 205 varas S. 87¼° E. 305 varas S. 20° E. 255 varas S. 1¾° E. 550 varas, S. 19½° W. 575 varas, S. 7° E. 630 varas S. 13¾° W. 1025 varas, S. 6¼° E. 715 varas S. 6° W. 860 varas S. 1° E. 1140 varas S. 1¾° E. 280 varas, S. 41° W. 375 varas S. 3¾° W. 180 varas, S.
165 28¼° E. 750 varas S. 8° E. 160 varas, S. 10¾° W. 120 varas S. 32¼° W. 295 varas S. 47¼° W. 105 varas S. 87¼° W. 575 varas, S. 29° W. 220 varas S. 17¾° W. 503 varas. Thence leaving arroyo S. 81¾° E. 2366 varas to the S. E. corner of this portion and N. E. corner of portion 3 share 2 on east line of tract and W. line of grant called Espiritu Santo. Thence with line between said grants N. 9¼° E. at 60 to 480 varas an opening or rincon of "Llano del Castillo," at 870 varas an opening, at 2232 varas a post in small opening and pond, at 2340 varas an ebony, at 4235 varas large leaning mesquite marked ═══ at 6380 varas entered a huisache flat called "Media Luna," at 9389 varas a stake on bank of Arroyo Colorado between two (2) marked ebonies and at 9435 varas, to the place of beginning.

The said share of the lands of the Concepcion de Carricitos tract contains nine thousand six hundred and three and four-sevenths (9603 4/7) acres of front and back land.

Share No. 2. And it is further considered, ordered and adjudged that the next succeeding share of the said "Concepcion de Carricitos" lands as partitioned and set apart in said report of partition be and the same is now hereby allotted, assigned, partitioned and set apart in severalty to the said plaintiffs, Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe, as heirs and devisees of Mrs. Kate M. Combe, deceased, in three (3) different tracts or portions, by metes and bounds as follows, to-wit:—

Portion No. 1. Eight hundred and seven (807) acres of land on the north bank of the Rio Grande, including site of ranch formerly known as "Medrano," and is a portion of private survey No. 438, of Cameron county, the remainder of said private survey No. 438, being located on a banco, or cut-off, on the south bank of the Rio Grande and allotted as portion number two, (2) of this share. Beginning at a post set on base line at the N. E. corner of private survey No. 437, and S. W. corner of this portion, and running thence with base line S. 81¾° E. 1116 varas to a post for N. E. corner of this portion. Thence south at 710 varas entered timber, a mes-

quite ⩵ W. at 920 varas road to Higueras ranch, at 1482 varas a large mesquite E. at 1600 varas a large mesquite W. at 1720 varas middle of main road, at 1800 varas a mesquite E. at 2000 varas an ebony E. at 2200 varas a road and fence, at 2592 varas a large ash marked ⩵ bears E. 1½ varas at 3350 varas a fence and at
166 4065 varas to the S. E. corner on bank of river. Thence up the river with its meanders W. 500 varas S. 72° W. 155 varas N. 66° W. 500 varas to a post on bank for S. W. corner of this portion. Thence north, at 10 varas a post, at 312 varas Montes jacal, and stake from which an anacua marked ⩵ bears 1½ varas E. at 414 varas road, at 587 varas an ebony E. at 1100 varas left resaca, at 1314 to 1550 varas timverguenzal, at 1815 varas an ebony W. at 2196 varas an ebony W. at 2515 varas a stake on N. side of road, at 2900 varas a prairie, at 3770 varas road to Higueras, and at 4070 varas, to the place of beginning.

Portion No. 2. Portion number two (2), of this share, being thirty-two (32) acres of land out of private survey No. 438, situated in a banco, or cut-off, on the south bank of the Rio Grande river, where an extension due south of the E. line of portion No. 1, of this share strikes same, a stake on bank of estero and running thence down said estero with its meanders, S. 59½° W. 313 varas S. 60½° W. 353 varas, S. 23½° W. 200 varas, N. 87° E. 380 varas N. 67° 301 varas to the south-east corner of this portion a stake on bank. Thence north 379 varas to the place of beginning.

Portion No. 3. Portion No. 3 three, (3), of this share being nine thousand two hundred and seventy-five (9275) acres of land out of private survey No. 461, and included within its metes and bounds Ranches Las Burras, Realito, Huisachosa, El Nopal and El Fresnal.

Beginning at the N. E. corner of share No. 4, of this partition and S. E. corner of this portion on the N. W. or upper line of tract called San Pedro de Carricitos on lower line of this tract at a point S. 44° W. 44 varas from N. corner or apex of the said San Pedro de Carricitos, and running thence with line of same N. 44° E. 44 varas to a post on W. line of the Espiritu Santo grant from which a mesquite marked ⩵ (blaze and 5 chops) bears S. 87½° W. 7 varas. Thence with W. line of said Espiritu Santo grant, N. 9¼° E. at 520 to 900 varas through an opening, at 1000 varas a marked stake, at 1930 varas entered an opening at 2000 varas a marked stake, at 2400 varas entered brush, at 2425 varas a road, at 2809 varas a mesquite marked ⩵ 2 varas E. at 3440 varas a road, at 4000 varas a stake, at 4360 varas a mesquite marked ⩵ 2 varas E. at 5490 varas to 5640 varas lake, at 6000 varas a marked stake, at 6040 varas a road, at 6008 varas an ebony marked ⩵ 2½ varas E. at 6225
167 varas S. W. corner of Sabas Cavazos' pasture fence on bank of resaca, at 6740 varas opposite bank of resaca, at 7030 to 7120 varas crossed resaca E. of Fresnal pond, at 7720 varas resaca, at 7907 varas N. W. corner of Cavazos' pasture fence, at 7920 varas road, at 8260 to 8520 varas a dry lake, at 9000 varas a marked stake, at 9495 varas a marked mesquite ⩵ 2 varas E. at 9940

varas to 10200 varas opening or rincon from Castillo prairie, and at 10460 varas to the N. E. corner of this portion and S. E. corner of portion 4, of share No. 1. Thence N. 81¾° W. 2366 varas to the center of the Arroyo Colorado, and running thence up the arroyo with its meanders, S. 17¾° W. 1132 varas S. 38¼° W. 400 varas S. 19¼° W. 600 varas, S. 46¾° W. 220 varas S. 70° W. 180 varas, S. 85¾° W. 200 varas N. 75° W. 310 varas, S. 82¼° W. 80 varas. Thence leaving arroyo S. 34⅛° W. at 134 varas a post marked "H" "E" "H" and "1884" on bank from which an ebony marked X X and ═══ bears N. 48¾° W. 2 varas, at 724 varas, a mesquite ═══ 2 varas W. at 1838 varas, an ebony ═══ 2 varas W. at 2600 varas road to "La Luz" rancho, at 3200 varas "La Luz" to right about 150 varas, at 4340 to 440- varas a senalo, at 4632 varas a mesquite ═══ 2 varas E. at 5068 varas road to Realito, at 7680 to 7900 varas Abra de las Burras, at 7909 varas an ebony marked ═══ 2 varas E. at 8655 varas road to "Las Burras," at 8760 varas entered "Abra las Burras," and at 9128 varas to the S. W. corner of this portion and N. W. corner of share No. 3. Thence with N. line of share No. 3, S. 81¾° E. 7617 varas, to the place of beginning.

The three portions of this share aggregating 10,114 acres.

Share No. 3.—And it is further considered, ordered and adjudged that the next succeeding share being share No. 3, of the said Concepcion de Carricitos lands as partitioned and set apart in said report of partition, be and the same is now hereby allotted, assigned and partitioned, and set apart in severalty to the said Miss Frances E. Powers, one of the defendants, in one tract, or portion by metes and bounds as follows, to-wit:—

Six thousand eight hundred and eighty-eight (6888) acres, being portion of private survey No. 461, and the upper one-half of private survey No. 448, and encloses within its metes and bounds the Ranch San José and a portion of Ranch "El Cipres."

Beginning at a post in Carricitos prairie on base line set for the N. W. corner of private survey No. 448, and running thence
168 south, at 500 varas entered brush, at 1637 varas corner of pasture fence and entered field, at 1886 varas main road from Brownsville to Rio Grande City, at 2006 varas a post on N. bank of lake, at 2484 varas S. bank of lake, and at 3464 varas to a post on bank of river from which an ash marked ═══ bears N. 76° E. 89¼ varas. Thence down said river with its meanders, S. 41° E. 646 varas to estero of Banco "El Capote." Thence down said estero with its meanders N. 35½° E. 187 varas, N. 23½° W. 265 varas, N. 2° W. 160 varas N. 22½° E. 220 varas, N. 40° E. 380 varas, N. 30½° E. 440 varas N. 45½° E. 220 varas, N. 59½° E. 158 varas. Thence leaving estero N. 8¼° E. 2085 varas to a point on base line which is a corner on E. line of this share, and W. line of share No. 4. Thence continuing with W. line of share No. 4, N. 39¼° E. 12819 varas to the N. E. corner of this share, and N. W. corner of share No. 4, on the south line of portion 3, of share No. 2. Thence with south line of said portion of share No. 2, N. 81¾° W. 3789 varas to the S. W.

corner of same and N. W. corner of this share. Thence S. 34¾° W. at 370 varas S. edge of opening or rincon "Las Burras," at 955 varas road on bank of resaca, at 1230 varas ebony marked = 2 varas E. at 1580 to 1660 varas a resaca, at 1968 varas a mesquite = 2 varas W. at 2230 to 2290 varas a ravine, at 2757 varas a leaning mesquite mkd. = 2 varas E. at 2800 to 2870 varas a ravine, at 3145 varas road to San José at 3305 varas road to Las Peladas, at 3310 varas edge of swale, at 3330 varas Ranch Las Peladas, about 200 varas to the right, at 3410 varas across swale, at 4409 varas N. W. corner of pasture fence, and continuing along line of fence on same course at 5332 varas an anacahuita = 2 varas W. at 5370 to 5530 varas a resaca, at 5990 varas to 6150 varas a resaca at 6910 to 7070 varas a resaca, at 7237 varas an ebony = 2 varas E. at 7279 varas an ebony = 2 varas W. at 7370 to 7570 varas a swale, at 8332 varas an ebony = 2 varas E. at 8610 to 8850 varas a swale, at 10246 varas a mesquite = 2 varas E. at 10250 varas to 10330 varas a swale, at 11270 varas entered Carricitos prairie and at 12292 varas to a post on base line. Thence with base line and pasture fence S. 81¾ E. 1116 varas, to the place of beginning.

Share No. 4.—And it is further considered, ordered and adjudged that the next succeeding share being share No. 4, of the said
169 Concepcion de Carricitos lands as partitioned and set apart in said report of partition be and the same is now hereby, allotted, assigned and partitioned and set apart in severalty to the said Mrs. Annette P. Hicks, one of the defendants, in one tract or portion by metes and bounds as follows, to-wit:—Six thousand eight hundred and eighty-eight (6888) acres being portion of private survey No. 448, and includes within its metes and bounds, "Rancho El Gallo," and a portion of "El Cipres."

Beginning at the N. E. corner of private survey No. 448, on base line on west or upper line of San Pedro de Carricitos and running thence with line of said grant, S. 44½° W. at 1663 varas main road from Brownsville to Rio Grande City, at 2163 varas a field, at 3395 varas a tepeguahe, at 3715 varas ash tree 2 varas W. at San Ysidro, at 4963 varas to marked ebony post = on bank of river from which a willow marked / bears N. 42° W. 88 varas. Thence up river N. 42¼° W. 88 varas, to estero bed or banco, "El Capote." Thence up said estero with its meanders, N. 35½° E. 562 varas S. 58¼° E. 103 varas, N. 46¾° E. 300 varas, N. 37¼° E. 240 varas, N. 61° E., 140 varas, N. 37° E. 150 varas, N. 4° E. 560 varas, N. 48½° W. 384 varas, S. 59½° W. 22 varas to a corner of share No. 3, at "Cipres ranch." Thence with E. line of share No. 3, and leaving estero N. 8½° E. 2085 varas to a point on base line which is a corner on W. line of this share and E. line of share No. 3. Thence continuing with E. line of share No. 3, N. 39¼° E. 12819 varas to the N. E. corner of share No. 3, and N. W. corner of this share on south line of portion (3) three, share No. 2. Thence with S. line of said portion of share No. 2, S. 81¾° E. 3828 acres to the S. E. corner of share No. 2, and

N. E. corner of this share on W. or upper line of San Pedro de Carricitos grant, from which corner a post at the N. corner or apex of said grant bears N. 44° E. 44 varas. Thence with upper line of said San Pedro de Carricitos grant, S. 44° W. at 219 varas old sendero running N. 8° E. at 340 varas double mesquite = 2 varas E. at 899 varas an opening, at 951 varas a mesquite = 2 varas E. at 1139 varas across grassy opening, at 1782 varas leaning mesquite = 2 varas W. at 2214 varas dry trunk chops and X 3 varas E. at 2726 varas mesquite = 2 varas E. on south edge of "Llano del Castillo" at 4435 varas an ebony marked = 2 varas E. at 6919 varas to 7069 varas dry lake at 7224 varas corner of pasture fence, and continuing along line of fence with same course, at 7859 to 8659 varas a
170 resaca, at 8999 varas a swale, at 9539 varas entered Retamal prairie, at 9919 varas a stake, at 11739 varas left Retamal prairie and at 13539 varas, to the place of beginning.

And it is further ordered, adjudged and decreed that the said lands in Hidalgo county, to-wit,—the said two (2) porciones of land hereinbefore described be and the same are now hereby allotted, assigned, partitioned and set apart in severalty to the several parties as in said report of partition, as follows, to-wit:—

First, *First.* To Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe as the heirs and devisees of the said Mrs. Kate M. Combe, deceased, the upper or western one-fourth (¼) of said two (2) porciones containing (3017½) three thousand and seventeen and one-half acres of land fronting one-fourth (¼) of the width of said two porciones upon the Rio Grande river and extending to the rear of said porcion for quantity.

Second, *Second.* To the said Mrs. Annette P. Hicks, the next lower succeeding one-fourth (¼) share or portion of said two (2) porciones containing three thousand and seventeen and one-half (3017½) acres fronting one-fourth (¼) of the width of said two porciones upon the Rio Grande river and extending back in a northerly direction between parallel lines to the rear of said porciones for quantity.

Third, *Third.* To the said Mrs. Agnes A. Browne, the next lower succeeding one-fourth (¼) share or portion of said two porciones containing three thousand and seventeen and one-half (3017½) acres of land fronting one-fourth (¼) of the width of said two porciones upon the Rio Grande river and extending back in a northerly direction between parallel lines to the rear of said porciones for quantity.

Fourth, *Fourth.* To the said Miss Frances E. Powers, the next succeeding and adjoining, being the extreme lower one-fourth (¼) share, or portion of said two porciones, containing three thousand and seventeen and one-half (3017½) acres of land fronting one-fourth (¼) of the width of said two porciones upon the Rio Grande river, and extending back in a northerly direction between parallel lines to the rear of said porciones for quantity.

And it is now here further ordered, adjudged and decreed
171 that the said city lots in the city of Brownsville as hereinbefore set out and described be and they are now hereby

allotted, assigned, partitioned and set apart in severalty to and among the said respective parties as in the said report of partition as follows, to-wit:

First, *First.* To the said Mrs. Agnes A. Browne, the one-half (½) of lot number two, (2) in block number fifty-nine, (59) fronting (25) twenty-five feet on Elizabeth street and extending back one hundred and twenty (120) feet to an alley in the rear for quantity.

Second, *Second.* To the said Miss Frances E. Powers: 1st.—Lot number three (3) in block number fifty-one, (51) fronting fifty (50) feet on Elizabeth street, and extending back between parallel lines one hundred and twenty (120) feet to an alley in the rear for quantity. 2nd.—*Second.*—Lot number seven, (7), in block number one hundred and sixteen, (116), fronting fifty (50) feet on Jefferson street and extending back between parallel lines one hundred and twenty (120) feet to an alley in the rear for quantity.

Third, *Third.* To the said Mrs. Annette P. Hicks, lots numbers seven and eight, (7 and 8) in block number (95) ninety-five, fronting fifty (50) feet each upon Adams street, and extending back between parallel lines one hundred and twenty (120) feet to an alley in the rear for quantity.

Fourth, *Fourth.* To the said heirs of the said Mrs. Kate M. Combe, deceased, lots eight, (8) and nine, (9) in block number ninety-one, fronting fifty (50) feet each, upon Adams street, and extending back between parallel lines one hundred and twenty (120) feet to an alley in the rear for quantity.

It is further ordered and adjudged that all of the ranches, pastures, houses, fences, fields, clearings and any other improvements or thing whatsoever upon any of the said lands or city lots do and are hereby adjudged to belong to and be the property in severalty of the respective party to whom the land or lot upon which it is situated is allotted, free from any ownership, right, or claim of the other parties respectively.

To have and to hold unto each of the said respective parties the said several shares, tracts of lands and lots and all improvements thereon hereinbefore allotted and set apart to them in severalty unto them, their heirs and assigns, respectively, forever.

172 And it is further considered, ordered and adjudged, that this judgment and decree do stand for and serve as a conveyance and title to each of the said respective parties hereto of the several and respective shares and portions of the said premises hereinbefore adjudged to them, respectively, as against the other parties hereto, their executors and administrators and assigns as fully and effectually as the deed of said parties could vest the same.

It is further ordered, adjudged and decreed that all of the matters of account between the respective parties embraced in and set out in said report of the commissioners are fully and finally adjusted and settled and balances found due from one to the other as shown by said report, and all money differences for improvements and also for the purpose of equalizing said respective shares, and also charges

and costs of said commissioners and surveyor of this partition, save and except the costs of court herein are each all fully paid and finally settled. That the costs of court incurred herein be paid in proportion of one equal fourth (¼) part each by the said heirs of Mrs. Kate M. Combe, deceased, Mrs. Agnes A. Browne, Mrs. Annette P. Hicks and Miss Frances E. Powers, for all which let execution issue in the said proportion against the said parties, respectively.

* * * * * * *

Whereupon, no further business appearing the court took a recess until to-morrow at 9 o'clock a. m.

173 THE STATE OF TEXAS, }
County of Cameron. }

I, Louis Kowalski, clerk of the district court of Cameron county, Texas, do hereby certify the above is a full, true and correct copy of the (original) decree of partition, rendered in the district court of Cameron county, Texas, on the 2nd day of October, A. D., 1891, in cause No. 1606, wherein Charles B. Combe, *et. al., is* plaintiff, and Annette P. Hicks, *et. al.*, are defendants, as the same appears of record on the minutes of said court, Book F., pages 684 to 694.

To certify which, witness my hand and the seal of court in the city of Brownsville, Texas, this 16th day of October, A. D., 1891.

[L. S.] LOUIS KOWALSKI,
Cl'k Dist. Ct., Cameron Co., Texas.

Filed for record at 7 a. m., October 19th, A. D., 1891, and recorded at 8 o'clock, a. m., October 22nd, A. D., 1891.

J. WEBB, *Co. Clerk.*

THE STATE OF TEXAS, }
County of Cameron. }

I, Joseph Webb, clerk of the county court, in and for Cameron county, Texas, do hereby certify that the above and foregoing sixteen (16) pages of writing contain and are a full, true and correct copy of an instrument of record in my office, in volume "L," pages Nos. 86 to 102, of the real estate records of said Cameron county.

Witness my hand and the seal of the county court, of said county, at my office, in the city of Brownsville, Texas, this twenty-fifth (25th) day of June, A. D., 1898.

[SEAL.] JOSEPH WEBB,
Clerk County Court, Cameron County, Texas.

(Endorsements:) No. 21. Equity. C. B. Combe, executor *vs.* Jas. Stillman, *et. al.* Certified copy of decree of partition among heirs of Stephen Powers, deceased, in cause No. 1606,—C. B. Combe, *et. al., vs.* Annette P. Hicks, *et. al.*—Exhibit to answer of d'f't Thos. Carson to rule to show cause, etc. Filed July 5, 1898. D. H. Hart, clerk. (63.)

174 *Return to Rule for Contempt Taken on James Stillman.*

U. S. Circuit Court, Western District of Texas, at Brownsville.

C. B. COMBE, Executor,
vs.
JAMES STILLMAN ET ALS. } No. 21. In Equity.

Now comes James Stillman, through his undersigned solicitors and for return to the rule herein taken upon him for contempt says:

I. This defendant has made no appearance is this cause save for the limited and special purpose of denying the jurisdiction of this honorable court over him; and he respectfully submits that he is entitled to have the question of jurisdiction settled before he can be made amenable to any orders or directions of the court.

II. This defendant avers that the order appointing the receiver in this cause is null and void and of no effect, because, as he is advised and believes, this honorable court was and is without jurisdiction to hear and determine this cause or to enter any order or take any proceedings therein save an order of dismissal, for the reasons set forth in this defendant's formal plea to the jurisdiction, herein filed and of record in this cause.

III. This defendant avers that he has never as yet made any refusal to obey any order of this court; that no proper demand, or personal demand, has ever been made upon him in this cause, either by S. J. Brooks, receiver, or by any other person, for the delivery of any fund in his possession; that the only communication which this defendant has ever received, purporting to come from the said S. J. Brooks, was a letter dated March 10, 1898, a copy of which is hereto annexed, marked "Exhibit A," which letter was delivered to this defendant by a person who did not claim to represent, and did not in fact represent, the said S. J. Brooks, and did not claim to have any authority to receive money, and did not wait for any answer nor even wait a sufficient length of time for this
175 defendant to read the said letter. This defendant was, and is, entirely unacquainted with the hand-writing of the said S. J. Brooks, and did not then, and does not now, know positively that the said letter was actually signed or sent by Mr. Brooks, although he supposes such to be the fact. At the time of receiving the said letter this defendant was fully two thousand miles distant from the place at which the said letter was dated; and this defendant respectfully submits that a demand made in the manner and under the circumstances aforesaid was entirely void and did not, and could not, impose upon this defendant the duty of traveling two thousand miles to San Antonio, Texas, in order to find the said receiver, nor yet of taking the risk of transmitting so large a sum of money, or any money, over such a distance.

IV. This defendant avers that he could not, if he had desired to do so, comply with the order entered in this cause, for the reason, as the complainant well knew, that, before the said order was made, there had been actually paid out of the said appropriation of $160,000, for necessary and proper expenses and disbursements, nearly all of which the complainant had expressly assented to, personally or through his attorney, at least the sum of $60,000, made up as follows:

1. That, as expressly appears from the exhibits attached to the alleged complaint and information upon which the rule to show cause was obtained, this defendant was obliged, as a condition precedent to the collection of the said appropriation from the United States, to pay the sum of $8,101.02 for taxes assessed upon the Fort Brown reservation, and did pay the said sum for that purpose in April, 1895, before the said appropriation was collected.

2. That, as expressly appears from article X of the bill of complaint herein, $20,000 out of the said appropriation were to be forthwith paid, upon its collection, to certain agents at Washing-
176 ton, D. C., for procuring the passage of the act making the said appropriation; and this defendant duly paid the said sum in May, 1895, to such agents, out of the said appropriation.

3. That, by an agreement dated January 19, 1886, made by James B. Wells, Jr., as agent and attorney in fact for this complainant and others, a copy of which agreement is hereto annexed, marked "Exibit B," the said Wells agreed that he would procure the payment of $5,000.00 out of said appropriation to Gener*la* J. Hale Sypher, of Washington, D. C., for the fee of the said Sypher in assisting in procuring the passage of said appropriation; and subsequently the said Wells, as such agent and attorney, desired this defendant and the defendant Thomas Carson, as administrator, to recognize the said agreement and consent to pay the said sum to the said Sypher out of the said appropriation when collected; and, in pursuance of this request and also on account of serv*u*ces rendered by the said Sypher in assisting in collecting the said appropriation, this defendant agreed to pay, out of the amount of the said appropriation, to the said Sypher, the said sum of $5,000, and did actually pay the said sum to him in May, 1895.

4. That, on October 19, 1889, a supplemental agreement was executed between various persons claiming an interest in the fund, including this complainant and the devisees under the will of Stephen Powers, whom he now claims to represent, a copy of which agreement is hereto annexed, marked "Exhibit C," providin*f* for the expenditure of the further sum of $25,000 in collecting the said appropriation; that that agreement was executed at a time when it was supposed that the appropriation could be collected within a short period, whereas it was not in fact actually collected until nearly six years later and after the expenditure of a vast amount of time and much additional money in the effort to collect the same: all of

which facts this complainant, either personally or through
177 his attorney, the said James B. Wells, Jr., was well informed; and this defendant in good faith, out of the amount of the said appropriation collected by him, actually paid, on account of such expenses and disbursements, in addition to the sums hereinabove mentioned aggregating $33,101.02, much more than the said sum of $25,000 and at least the sum of $26,898.98.

5. That the complainant does not pretend by his bill of complaint to be entitled to more than a one-half interest in the said fund; and it expressly appears on the face of the bill of complaint, in paragraph VIII thereof and in Exhibits C and D thereto annexed, that the one-half interest to which the plaintiff lays claim, if owned by him at all, is owned jointly by him and the defendant Marie Grogan Dana.

6. That neither this defendant nor his co-defendant, Thomas Carson, has ever received anything for his services in collecting the said appropriation; and, if they are held to be trustees of the said fund, this defendant is advised and believes that they are entitled to reasonable compensation out of the said fund for their services and are also entitled to all reasonable payments and disbursements made by them or on their behalf in the collection of the said appropriation.

And this defendant therefore avers that complainant having knowingly obtained this unjust and inequitable order directing this defendant to pay over a fund in bulk when he well knew that a large proportion thereof had been expended by this defendant for complainant's benefit and for the benefit of the fund itself, which order he well knew this defendant could not comply with, is not entitled in a court of equity to enforce non-compliance with said order by process for contempt.

Wherefore defendant prays that this rule may be discharged.

FARRAR, JONAS, KRUETSCHUETT & GURLEY, *Sol'rs.*

EDGAR H. FARRAR, *Counsel.*

178 UNITED STATES OF AMERICA, }
Southern District of New York. }

James Stillman, being duly sworn, deposes and says that he has read the foregoing return and knows the contents thereof, and that the same is true to his own knowledge except as to those matters which are therein stated to be upon information and belief, and as to those matters he believes it to be true.

JAS. STILLMAN.

Subscribed and sworn to before me this 14th. day of June, 1898.

HORACE M. KILBORN,
Notary Public, Kings County.

[SEAL.]

Cft. filed in N. Y. Co.

179 EXHIBIT A.

P. H. Swearingen. S. J. Brooks.

Swearingen & Brooks, lawyers, Maverick Bank building.

SAN ANTONIO, TEXAS, *M'ch* 10/98.

Mr. James Stillman, c/o National City bank, 52 Wall St., New York.

DEAR SIR: As you have been advised by the orders of court served on you, I was in July, 1897 appointed by Judge T. S. Maxey as receiver of the fund of $160,000. involved in cause No. 104 equity styled C. B. Combe, ex'r. *vs.* Jas. Stillman *et al.* pending in the U. S. circuit court for the western district of Texas.

The object of this letter is to advise you that I have duly qualified as such receiver and to demand that you turn over such fund to me as receiver in obedience to said order.

I have given the bond required by the court and am prepared to give such further bond as it may direct.

Trusting to hear from you soon, I am,

Yours truly,

S. J. BROOKS.

Dict. S. J. B.

180 EXHIBIT B.

This contract made and entered into by and between J. B. Wells, attorney at law, of the city of Brownsville, State of Texas, of the first part, and E. N. Hill, attorney at law of the city of Washington, District of Columbia, of the second part, witnesseth: That the said party of the first part is the agent and attorney in fact for the collection of certain monies due and appropriated by the Government of the United States to the heirs and assigns of Paredes and Salinas, residents of the State of Texas, which agency and attorneyship is evidenced by certain powers of attorney now on file in the said case, and the said party of the first part, desiring to secure the services of the said Hill and his associates in securing the payment of said monies, agrees for himself and his principals to pay to the said party of the second part ten per cent. of any and all sums that may be paid to him as agent for the above named parties out of the appropriation now made to pay for the Fort Brown reservation, the said party of the second part and his associates agreeing to give their

best professional services to secure the payment of the moneys claimed at the earliest possible day, and to do all acts necessary and proper to be done by attorneys in said case.

The said party of the first part further agrees that in the event of the collection of the money appropriated to pay for the Fort Brown reservation that he will protect Gen. J. Hale Sypher in securing the fee of five thousand dollars, for services secured by said Sypher in the passage of said appropriation, it being further agreed that should the said five thousand dollars fee be paid entirely by said Wells, then the sum is to be deducted from the said ten per cent.

Signed this 19th. day of January 1886 in the city of Washington, District of Columbia.

JAMES B. WELLS, JR.,
Agent and Attorney in Fact for Assigns of Paredes and the Heirs and Assigns of Miguel Salinas.

181 EXHIBIT C.

THE STATE OF TEXAS, }
County of Cameron. }

Whereas on the thirteenth (13th) day of July A. D. 1887, we the undersigned, James Stillman, Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, Mrs. Charlotte Miller, Henry Miller, B. O. Hicks, and C. B. Combe, executors of the will of Stephen Powers, deceased, B. O. Hicks, guardian of the estate of Frances E. Powers, Kate M. Combe and C. B. Combe, B. O. Hicks and Annette P. Hicks, Mat Gerhard, Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Charles S. Dana and Marie Grogan Dana, Francisco Yturria, Juan Salinas, H. E. Woodhouse, Agnes A. Browne, and James A. Browne, as owners and claimants of the military reservation of Fort Brown at Brownsville, Cameron county, Texas, did enter into an agreement for the purpose of facilitating the collection from the United States Government and the distribution among the true owners thereof, of the appropriation of one hundred and sixty thousand dollars ($160,000) made by the said Government for the purchase of the said Fort Brown military reservation, a copy of which agreement is hereto attached and made part hereof for greater certainty;

And whereas, in and as a part of said agreement it is stipulated, that the sum of twenty thousand dollars ($20,000.00) will upon the collection of said appropriation be due and owing to certain agents at Washington, who assisted in procuring the said appropriation, who must first be paid from said fund, when received, and that the said sum shall be paid by the arbitrators therein named, when collected by them, to said agents at Washington;

And whereas, owing to many and insurmountable obstacles, said

appropriation nor any part thereof has been collected, and still remains in the Treasury of the United States;

And whereas, in *and* efforts already made and to be made to collect said appropriation a much larger sum will be necessary than said sum of twenty thousand dollars ($2–,000.00) as mentioned
182 in said agreement to pay persons employed in making said collection.

And whereas, it is believed that the further sum of twenty-five thousand dollars ($25,000.00) in addition to said sum of twenty thousand dollars ($20,000.00) mentioned in said agreement will be necessary to be expended in the collection of said appropriation.

And whereas, it is for the interest of all of the parties hereto, that the said appropriation should be collected as soon as possible and distributed among the persons entitled thereto.

It is therefore now here in consideration of the premises agreed by each and all of the undersigned and each of them does now hereby mutually agree and covenant with the other as follows, to wit:

First. That in addition to the sum of twenty thousand dollars ($20,000.00) mentioned in said agreement as being due to agents and for expenses, the arbitrators shall be at liberty upon the collection of said appropriation to, and shall, if necessary pay the further sum of not exceeding twenty-five thousand dollars ($25,000.00) to any such agents and for any such purposes as may be necessary to collect said appropriation, it being, however, expressly provided that no part of said sum of twenty-five thousand dollars ($25,000.00) due from any one, *or* be paid by said arbitrators to any one until said appropriation of one hundred and sixty thousand dollars (160,000.00) is actually and finally paid by the Government to the parties hereto, their arbitrators, agents, or attorneys and shall only become due and be paid out of the said appropriation when actually collected by and through the efforts and services of the said agents to whom said additional sum or the necessary part thereof is to be paid, and upon full accounts and vouchers submitted to the parties hereto, their agents, attorneys or arbitrators and found satisfactory and correct and approved by them.

Second. That nothing in said original agreement or herein contained shall ever be so construed as to give such agent or other person employed or in any manner instrumental in the collection of said appropriation, any lien or claim whatsoever in law or equity to said appropriation or any part thereof or any claim or demand of any nature whatsoever, against any of the parties to said
183 original agreement, or hereto.

Third. That these presents shall in all things be construed as *a* supplemental to, and forming part of the said original agreement herein. The erasure with red ink of the word "believed" appearing on the twenty-sixth line of the second page of this instrument was made before signing.

In witness of all of which witness our and each of our signatures

interchangeably set hereto, in duplicate, this the nineteenth (19th.) day of October, A. D. 1889.

Witness—

CHARLES S. DANA AND
MARIE GROGAN DANA, *His Wife,*
By JAMES B. WELLS, *Their Attorney.*
THOMAS CARSON,
Administrator with the Will Annexed of the Estate of Maria Josefa Cavazos, Deceased.
C. B. COMBE,
Sole Executor of the Last Will & Testament of Kate M. Combe, Deceased.
ANNETTE P. HICKS,
By E. KLEIBER, *Her Attorney in Fact.*
FANNY E. POWERS,
By E. KLEIBER, *Her Attorney in Fact.*
AGNES A. BROWNE.
JAMES A. BROWNE.
FRANCISCO YTURRIA.
JUAN SALINAS,
Pp. FRANCISCO YTURRIA,
His Attorney in Fact.
CHARLOTTE MILLER,
By W. H. MASON, *Her Attorney.*
HENRY MILLER,
By W. H. MASON, *His Attorney.*
MAT GERHARD,
Per JAMES B. WELLS, *His Attorney.*
FELICITA SALINAS,
Per JAMES B. WELLS, *Her Attorney.*
ANDREA SALINAS,
Per JAMES B. WELLS, *Her Attorney.*
R. D. HINOJOSA,
Per JAMES B. WELLS, *His Attorney.*

64 Endorsements: No. 21. In equity. U. S. circuit court western district of Texas. at Brownsville. C. B. Combe, executor, *vs.* James Stillman, *et als.* Return to rule for contempt taken James Stillman. Filed July 5, 1898, D. H. Hart, clerk. Farar, nas, Kruetschuett & Gurley, sol'rs. (64)

185 *Order of Court Overruling Plea to Jurisdiction, etc.*

In the United States Circuit Court for the Western District of Texas, at Brownsville.

C. B. COMBE, Ex'r, etc., *vs.* JAMES STILLMAN ET AL. } No. 21. In Equity.

This cause came on to be heard at this term at Austin, by consent of counsel, on the sufficiency of the plea to the jurisdiction filed by the defendants James Stillman and Thomas Carson administrator, etc., and was argued by counsel, whereupon and upon consideration thereof, it is ordered, adjudged and decreed that said pleas be adjudged insufficient and that they be overruled.

It is further ordered that the defendants be allowed until the rule day in September next, to further plead, demur or answer in this cause, as they may be advised.

It is further ordered that this order be entered upon the minutes of the court in the Austin division, and also upon the order book in the Brownsville division.

Ordered, adjudged and decreed in open court at Austin, Texas, July 5, 1898.

T. S. MAXEY, *Judge.*

Endorsed: No. 21. Equity. C. B. Combe, ex'r etc. *vs.* James Stillman, *et al.* Order of court overruling plea to jurisdiction, etc. Entered July 12–98. Filed July 6, 1898. D. H. Hart, clerk.

186 *Assignment of Errors in No. 21 in Equity.*

C. B. COMBE, Executor, *vs.* JAMES STILLMAN ET AL. } No. 21. In Equity.

In the matter of appeal in the above styled and numbered cause by Thomas Carson individually and as administrator of the estate of Maria Josefa Cavazos, from the interlocutory order and decree entered in the above cause on the 15th day of July, 1897, appointing a receiver and granting an injunction, comes said Thomas Carson individually and as such administrator, by his counsel herein, and shows that in the record and proceedings in the above entitled matter, there is manifest error, which he assigns as follows, towit:

First.

The court erred in holding that it had jurisdiction in this suit, for this:

1st. It appears from the face of complainant's bill that he is a resident citizen of the State of Texas, and that Thomas Carson and other defendants are resident citizens of the State of Texas, and that James Stillman and some of the other defendants are resident citizens of other States, and there is no such diversity of citizenship as to give this court jurisdiction of this suit.

2nd. It appears upon the face of complainant's bill that same is an original bill and that this proceeding is an independent suit, and there being no diversity of citizenship of parties, this court has no jurisdiction.

3rd. That it appears upon the face of complainant's bill that the same is in no wise dependent upon or ancillary to the suit No. 248, entitled Heirs of Miguel Salinas, *vs.* William L. Kellogg, formerly pending in the circuit court of the United States for the western district of Texas, and that therefore this court has no jurisdiction to entertain the matters complained of in said bill as dependent or ancillary to said suit of Salinas *vs.* Kellogg, it being apparent upon the face of the bill that the said suit of Salinas *vs.* Kellogg
187 has long since been finally disposed of by judgment duly rendered and that said judgment has been in all things executed, and that if complainant is entitled to any relief in the premises it is necessarily through an independent original bill in chancery or a suit at law.

4th. It appears upon the face of said bill and the proof had upon the hearing, that no jurisdiction over the person of the defendants had been obtained by due and proper service of process at the time of said hearing, even if complainant's bill should be treated as a dependent or ancillary bill.

Second.

The court erred in granting the injunction herein as granted by said interlocutory order or decree and appointing the receiver herein as appointed by said interlocutory order or decree, because it is apparent upon the face of the bill and the proof had upon the hearing that no service of any proper process was had upon the defendants named in said bill, and that none of said defendants were before the court by any character of appearance except the appellant herein, and that there was no fund within the custody of the court or its jurisdiction upon which its said interlocutory order could in any way operate, and because it is apparent upon the face of said bill and the record in the case, that the defendant Carson is not now in possession of the fund referred to in complainant's bill, and has never been in possession thereof, and that said fund, if any

exists, is in the possession of one, James Stillman, a resident citizen of New York, in the State of New York, and beyond the jurisdiction of this court.

Third.

The court erred in granting the injunction herein granted in its interlocutory order because it nowhere appears in complainant's bill, or in any of the proof had upon the hearing, that the defendant Carson, either individually, or as administrator, is in anywise using the said judgment in the case of Salinas *vs.* Kellogg for the purpose of misappropriating, withholding or in any manner controlling the fund referred to in complainant's bill.

188 Fourth.

The court erred in granting said injunction and appointing said receiver, because it is apparent upon the face of complainant's bill that there is no equity therein, and that if he has any right of action whatsoever to recover any portion of the fund referred to in said bill, that his remedy at law is ample and adequate.

THOS. H. FRANKLIN,
DU VAL WEST,
Counsel for Defendant Thomas Carson, Adm'r, etc., and for Thomas Carson Individually.

Endorsed: No. 21. In equity. In the circuit court of the United States in and for the western district of Texas, at San Antonio. C. B. Combe, executor *vs.* James Stillman, and Thomas Carson, adm'r, *et als.* Assignment of errors. Filed 15th day of July, 1897, D. H. Hart, clerk, by A. Grosenbacher, deputy.

189 In Circuit Court U. S. in and for Western District of Texas.

COMBE, Executor,
vs.
STILLMAN ET AL.

In the matter of the appeal from the interlocutory order of the court herein rendered on this, the 15th, day of July, 1897, granting an injunction and appointing a receiver it is agreed as follows.

1st. That Carson individually, and as administrator, may file his assignment of errors herein as of this day at any time within the next ten days.

2d. That the judge of this court, or Judge T. S. Maxey, sitting may approve any bond herein or bonds to be filed herein, and sign any orders, citation or other process necessary to perfect said appeal in any place where he may be, whether in or out of this Federal district, at the time same may be presented for approval or signa-

ture to him, within the time allowed by law for perfecting this appeal.

Witness our signatures this, the 15th, day of July, 1897.

W. N. PARKS,
C. L. BATES,
Counsel for Plaintiff, C. B. Combe.

FRANKLIN & COBBS,
DUVAL WEST.
Counsel for Carson, and Carson, Administrator.

Endorsed: No. 21. Combe, executor, *vs.* Stillman, *et al.* Agreement as to filing assignment of error. Filed July, 15th, 1897. D. H. Hart, clerk.

190 *Appeal Bond.*

C. B. COMBE, Executor,
vs.
JAMES STILLMAN and THOMAS CARSON, Administrator, *et al.* } No. 21. In Equity.

Whereas, heretofore, towit, on the 15th day of July, A. D. 1897, the complainant, C. B. Combe, executor, etc., applied to the judge of the circuit court of the United States in and for the western district of Texas, for the appointment of a receiver of a certain fund of one hundred and sixty thousand dollars alleged to be in the hands of the said defendants James Stillman and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and Thomas Carson individually, and to require the said named defendants to pay over the said fund to said receiver; or pay the same into the registry of the court; and for the issuance of preliminary writs of injunction as prayed for in complainant's bill, to enjoin the said named defendants from making fraudulent use of a certain judgment at law of said circuit court rendered on July 14th, 1887, in a certain cause in said court at the Brownsville division thereof, styled the Heirs of Miguel Salinas *vs.* William Kellogg *et al.*, numbered 248 on the law docket of said court, and upon a hearing of said application the court granted the writ of injunction by the issuance of the following order:

"C. B. COMBE, Executor of Stephen Powers, Deceased,
v.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Suit pending in the United States circuit court for the western district of Texas, at Brownsville, Texas.

191 Be it remembered, that on this the 15th day of July, A. D. 1897, in open court at Austin, Texas, came on to be heard the motion and application of plaintiff herein for the appointment of a receiver and for the issuance of a preliminary writ of injunction upon plaintiff's bill, motion, proof of service of notice of said motion, the response of the defendant Carson, as administrator and individually, to said motion, and the record in suit No. 248 on the law docket of said court at Brownsville; and the defendant James Stillman not appearing, and the court having heard argument of counsel and being advised of all matters of fact and of law arising upon said motion and application and of the response thereto, is of the opinion that the court has jurisdiction of this cause as being a suit ancillary to said cause No. 248 on the law docket of this court, and is therefore of the opinion that the same should be sustained:

It is therefore ordered, adjudged and decreed by the court that the said application of plaintiff, C. B. Combe, for the appointment of a receiver, and for preliminary writs of injunction herein be and the same is hereby sustained.

It is further ordered, adjudged and decreed by the court that S. J. Brooks be and he is hereby appointed receiver in this cause, but before entering upon his duties he shall execute bond, with two good and sufficient sureties, in the penalty of one thousand dollars, to be hereafter increased according to circumstances, conditioned and payable according to law, said bond to be approved by the clerk of this court, or any lawfully constituted deputy; and shall take and file in writing an oath that he will discharge his duties as receiver according to law and the directions of the court.

It is further ordered, adjudged and decreed by the court that the said S. J. Brooks, receiver, when he shall have qualified as hereinabove directed, be and he is hereby authorized to bring such suits as he may be advised by his counsel, and ordered by the court, for the purpose of recovering the one hundred and sixty thousand dollars alleged in plaintiff's bill of complaint to have been
192 collected from the Government of the United States as the purchase money and compensation for Fort Brown reservation and for the use and occupation thereof from the date of its seizure down to the time said money was paid over to said defendants.

It is further ordered, adjudged and decreed by the court that the said Thomas Carson, in his own right and as administrator with the

will annexed of Maria Josefa Cavazos, and the said James Stillman, their agents, attorneys, solicitors and counsel, be and they are hereby restrained and enjoined from using the judgment rendered on the 14th day of July, A. D. 1887, in suit No. 248 Heirs of Miguel Salinas *vs.* William Kellogg, *et al.*, on the law docket of this court at Brownsville, Texas, for the purpose of depriving plaintiff and the other defendants to this suit of their interests in said fund of one hundred and sixty thousand dollars, and from refusing to pay said fund into the hands of said receiver, and from refusing to account to this court for the same.

It is further ordered, adjudged and decreed that preliminary writs of injunction do issue out of this court in accordance with the above order and be served on defendant Carson as administrator and individually by the marshal of the western district of Texas, and upon the said defendant Stillman by the marshal of the southern district of the State of New York.

It is further ordered, adjudged and decreed that a writ of execution in chancery do issue out of this court to the marshal of the western district of Texas, commanding him to servie this order upon the said defendant Carson as administrator and individually, and also to the marshal of the southern district of the State of New York, commanding him to serve this order upon the said defendant James Stillman.

To all of which order, judgment and decree, the defendant Thomas Carson, administrator and individually excepted and in open court prayed an appeal therefrom to the United States
193 circuit court of appeals for the fifth circuit, sitting at New Orleans, Louisiana, which appeal is hereby granted him individually and as such administrator. And all further proceedings herein be stayed until the determination of this appeal, except the issuance and service of process. Appeal bond is fixed at $500.00.

It is further ordered that this order be entered upon the minutes of the court at Austin and then transmitted to Brownsville for record there which is hereby ordered to be done.

Ordered, adjudged and decreed in open court at Austin, Texas, this July 15th, 1897.

(Signed) T. S. MAXEY, *Judge*."

From which order granting injunction the said defendant Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and for himself individually, applied for and was granted an appeal to the United States circuit court of appeals at New Orleans, Louisiana, on condition that the said Carson, administrator, etc., and individually, should execute a bond in the sum of five hundred dollars, conditioned as provided by law.

Therefore, know all men by these presents, that I, Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and in my individual capacity, as principal, and William Kelly and Robert Dalzell, as sureties, acknowledge our-

selves bound to pay to C. B. Combe, executor of the estate of Stephen Powers, deceased, the sum of five hundred dollars, — the payment thereof we firmly bind ourselves, our heirs, executors and administrators, conditioned that the said appellant shall prosecute his appeal to effect, and if he shall fail to make his appl*ea* good, shall answer all costs.

In testimony whereof, witness our hands this 23rd day of July, A. D. 1897.

THOMAS CARSON,
Administrator with the Will Annexed of the
194 *Estate of Maria Josefa Cavazos, Deceased,*
THOMAS CARSON.
WILLIAM KELLY.
ROBERT DALZELL.

Approved this 23rd day of July, A. D. 1897.

[SEAL.] D. H. HART,
Clerk U. S. Circuit Court,
By CHAS. F. TIGHLMAN, *Deputy.*

The foregping bond is approved July 30, 1897.

T. S. MAXEY, *Judge.*

Endorsed: No. 21 Equity. In the circuit court of the United States in and for the western district of Texas, at Brownsville. C. B. Combe, administrator, *vs.* James Stillman *et al.* Appeal bond. Filed August 5th, 1897. D. H. Hart, clerk, by A. Grosenbacher, deputy.

195 *Citation.*

The above described document is a part of the transcript in No. 248; said transcript being part of, and beginning at page —, of this record.

196 *Clerks' Certificate.*

The above described document is a part of the transcript in No. 248; said transcript being part of, and beginning at page —, of this record.

197 *Motion to Execute Mandate and Decree.*

In the Circuit Court of the United States, Western District of Texas, Brownsville Division.

C. B. COMBE, Executor,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Whereas on July 15, 1897, an interlocutory decree was by this court pronounced and entered in the above stated cause, and from which decree an appeal was prayed, obtained and prosecuted to the United States circuit court of appeals for the fifth circuit; and

Whereas, the said United States circuit court of appeals at its term of November, 1897, affirmed the aforesaid decree appealed from, and remanded the cause to this court, and accordingly, on May 16th, 1898, issued its mandate to this court, which mandate was filed herein on May 26th, 1898; and

Whereas, the said mandate, and the said decree, affirmed as aforesaid remained wholly unexecuted; now, therefore,

The plaintiff, C. B. Combe, executor, by his counsel, comes and moves the court to record said mandate in the minutes of this court, and to execute said mandate and the aforesaid decree pronounced herein on July 15, 1897, and affirmed by the United States circuit court of appeals, as aforesaid, "according to right and justice, and the laws of the United States."

W. N. PARKS,
C. L. BATES,
Counsel for Plaintiff.

Endorsed: No. 21 In equity. U. S. circuit court, west. dist. Tex. Brownsville div. C. B. Combe, ex'r. *vs.* James Stillman, *et al.* Motion to execute mandate and decree. Filed Nov. 30, 1898. D. H. Hart, clerk. W. N. Parks, C. L. Bates, counsel.

198 *Mandate.*

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the western district Texas, Greeting:

Whereas, lately in the circuit court of the United States for the western district of Texas, before you, or some of you, in a cause between C. B. Combe, executor of Stephen Powers, deceased, complainant, and James Stillman and Thomas Carson, administrators of the

estate of Maria Josefa Cavazos, deceased, defendant-, wherein a decree was rendered on the 15th day of July, 1897, as follows, to-wit:

Entered July 15, 1897.

C. B. COMBE, Ex'r of Stephen Powers, Deceased,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Suit pending in the United States circuit court for the western district of Texas, at Brownsville, Texas.

Be it remembered that on this the 15th day of July, 1897, in open court at Austin, Texas, came on to be heard the motion and application of plaintiff herein for the appointment of a receiver, and for the issuance of a preliminary writ of injunction upon plaintiff's bill, motion, proof of service of notice of said motion, the response of the defendant Carson, as administrator, and individually to said motion and the record in suit No. 248 on the law docket of said court at Brownsville; and defendant James Stillman not appearing,
199 and the court having heard argument of counsel and being advised of all matters of fact and of law, arising upon said motion and application and of the response thereto, is of the opinion that the court has jurisdiction of this cause as being a suit ancillary to said cause No. 248 on the law docket of this court, and is therefore of opinion that the same should be sustained.

It is therefore ordered, adjudged and decreed by the court that the said application of plaintiff C. B. Combe, for the appointment of a receiver, and for preliminary writs of injunction herein be and the same is hereby sustained.

It is further ordered, adjudged and decreed by the court that S. J. Brooks be and he is hereby appointed receiver in this cause, but before entering upon his duties he shall execute bond, with two good and sufficient sureties, in the penalty of one thousand dollars, to be hereafter increased, according to circumstances, conditioned and payable according to law, said bond to be approved by the clerk of this court or any lawfully constituted deputy; and shall take and file in writing an oath, that he will discharge his duties as receiver according to law and the directions of the court.

It is further ordered, adjudged and decreed by the court that the said S. J. Brooks, receiver, when he shall have qualified as hereinabove directed, be and he is hereby authorized to bring such suits as he may be advised by his counsel and ordered by the court, for the purpose of recovering the one hundred and sixty thousand dollars, alleged in plaintiff's bill of complaint to have been collected from the Government of the United States as the purchase money and compensation for Fort Brown reservation, and for the use and

occupation thereof from the date of its seizure down to the time said money was paid over to said defendants.

It is further ordered, adjudged and decreed by the court that the said Thomas Carson, in his own right and as administrator with the will annexed of the estate of Maria Josefa Cavazos, and the said James Stillman, their agents, attorneys, solicitors and counsel
200 be and they are hereby restrained and enjoined from using the judgment rendered on the 14th day of July, 1887 in suit No. 248, Heirs of Miguel Salinas *vs.* William Kellogg, *et al.*, on the law docket of this court at Brownsville, Texas, for the purpose of depriving plaintiff and the other defendants to this suit of their interest in said fund of one hundred and sixty thousand dollars, and from refusing to pay said fund into the hands of said receiver, and from refusing to account to this court for the same.

It is further ordered, adjudged and decreed that preliminary writs of injunction do issue out of this court in accordance with the above order, and be served on the defendant Carson, as administrator, and individually by the marshal of the western district of Texas, and upon the said defendant Stillman by the marshal of the southern district of New York.

It is further ordered, adjudged and decreed that a writ of execution in chancery do issue out of this court to the marshal of the western district of Texas, commanding him to serve this order upon the said defendant Carson as administrator, and individually, and also to the marshal of the southern district of the State of New York, commanding him to serve this order upon the said defendant James Stillman.

To all of which said order, judgment and decree the defendant Thomas Carson, administrator, and individually, excepted, and in open court prayed an appeal therefrom to the United States circuit court of appeals for the fifth circuit sitting at New Orleans, La., which appeal is hereby granted him individually and as such administrator. And all further proceedings herein be stayed until the determination of this appeal, except the issuance and service of process. Appeal bond is fixed at five hundred dollars.

It is further ordered that this order be entered upon the minutes of the court at Austin and then transmitted to Brownsville for record thereof, which is hereby ordered to be done.
201 Ordered, adjudged and decreed in open court, at Austin, Texas, this July 15th, 1897.

T. S. MAXEY, *Judge.*

s by the inspection of the transcript of the record of the said cir-uit court, which was brought into the United States circuit court f appeals for the fifth circuit by virtue of an appeal sued out by aid Thomas Carson, individually and as administrator, agreeably o the act of Congress in such case made and provided, fully and at arge appears.

And whereas, in the present term of November, in the year of our

Lord one thousand eight hundred and ninety-seven, the said cause came on to be heard before the said United States circuit court of appeals, on the said transcript of record, and was argued by counsel:

On consideration whereof,

It is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be and the same is hereby affirmed.

It is further ordered, adjudged and decreed by the court that the appellant Thomas Carson, and the sureties on the appeal bond herein William Kelly and Robert Dalzell be condemned to pay the costs of this cause in this court for which execution may issue out of said circuit court.

MARCH 1, 1898.

You, therefore, are hereby commanded that such further proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

202

J. M. McKEE,

[SEAL.] *Clerk of the United States Court of Appeals for the Fifth Circuit.*

Attest:

A true copy.

J. MARTIN McKEE,
Acting Clerk.

Endorsed: United States circuit court of appeals, for the fifth circuit. No. 640. 21. Equity. November term, 1897. Thomas Carson, admn. *vs.* C. B. Combe, executor. Filed this — day —— 190- D. H. Hart cl'k Mandate. Original mandate lost from files. This duplicate is placed with papers 10/23/1901.

203 *Opinion of the Circuit Court of Appeals.*

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1897.

THOMAS CARSON, Individually and as Administrator of Estate of Maria Josefa Cavazos, Deceased, Appellant,
vs.
C. B. COMBE, Executor of Stephen Powers, Deceased, Appellee.
} No. 640.

Appeal from the circuit court of the United States for the western district of Texas.

Before Pardee and McCormick, circuit judges, and Swayne, district judge.

MCCORMICK, circuit judge, delivered the opinion of the court:

The following is a substantial statement of the allegations of the bill:

1. This bill, filed by appellee on June 14, 1897, in the United States circuit court at Brownsville, Texas, against appellant and James Stillman and nineteen other persons, defendants, is an ancillary bill, filed as ancillary or auxiliary to suit No. 248, Heirs of Miguel Salinas *vs.* William Kellog, *et al.*, on the law docket of the same court. With the exception of the United States and Kellog, the same parties to this suit were parties to the former suit, and the rights and interests and issues of facts and title involved in the former suit at law are further litigated in this suit in equity, and the present suit seeks, as against Carson and Stillman, to obtain and render available to plaintiff and some of defendants, the advantage, fruits and benefits of the proceeding and judgment in the former suit, and to enjoin Carson and Stillman from making fraudulent use of that judgment, and to enforce and adjust certain equitable rights and interests of plaintiff and some of the defendants, arising out of an- inseparably connected with the proceedings and judgment in, and subject to matter of the former suit.

2. It is averred in the bill that on or about May 1, 1846, Zachary Taylor, then a brigadier-general of the Army of the United States, commanding a military force of the United States Army, in the State of Texas, on the lower Rio Grande, and acting for and under the authority of the United States, at the city of Brownsville,
204 Cameron county, Texas, forcibly entered upon and took possession of a tract of land containing about 358.8 acres, and established thereon for the United States a military fort and garrison, called Fort Brown, and forcibly occupied the same by and with

a military force of the United States, and that said tract of land has been in the actual and exclusive possession of the United States as a military fort from May 1, 1846, down to the present hour, and that *of* the time of the seizure the tract of land was private property, belonging to Miguel Salinas and others, then resident citizens of Texas, to whom no compensation was ever made for the land, and the title to which was never acquired by the United States except at the time and in the manner set out in the bill. It is further alleged in the bill that appellee's testator, Stephen Powers, in his lifetime acquired a perfect and valid legal and equitable title in fee simple to an undivided one half of said tract, by a complete change of title from the sovereignty of the soil to himself, and that on February 5, 1882, he died seized of the same, and that the plaintiff is now his sole executor.

3. From May 1, 1846, the date of the seizure, to the present the persons and estates named as parties to this suit, and those under whom they claim, have asserted claim to parts of said tract of land, and sought payment for same, and for its use and occupation, from the Government; and to pay the owners for the land and its use and occupation, and to extinguish their claims and vest a good and valid title to the land in the Government, the Congress of the United States on March 3, 1885, made an appropriation in these words:

"To enable the Secretary of War to acquire a good and valid title for the United States to the Fort Brown reservation, Texas, and to pay and extinguish all claims for the use and occupancy of said reservation by the United States, the sum of one hundred and sixty thousand dollars, *provided*, that no part of this sum shall be paid until a complete title is vested in the United States, and the full amount of the price, including rent, shall be paid directly to the owners of the property."

4. On June, 29, 1886, nine of the heirs of Miguel Salinas filed suit (trespass to try title) in the district court of Cameron county, Texas, against William Kellogg, colonel of the United States Army, commanding officer of Fort Brown, to recover the title and possession of said tract of land; and on June 30, 1886, defendant Woodhouse filed his petition of intervention in the suit in the State court, claiming to be the owner of the share of four of Salinas' heirs in the land.

205 5. On application of defendant Kellogg, the suit instituted in the State court was removed to the United States circuit court for the western district of Texas, Brownsville division, the transcript from the State court having been filed in the Federal court on November 3, 1886, and entered on the lower docket of that court, No. 248, Heirs of Miguel Salinas *vs.* William Kellogg *et al.*, and was proceeded with as a suit pending in that court.

6. On December, 1886, Rudolph Kleberg, district attorney for the western district of Texas, acting under instructions from the Attorney-General of the United States, intervened for the Government in the suit No. 248, and had The United States made party defend-

ant therein, and filed answers for Kellogg and the United States, and pleaded not guilty, and set up outstanding title to Fort Brown reservation in a large number of persons, among them the defendants Carson, administrator, and Stillman and the heirs, devisees, legatees and estate of Stephen Powers, deceased, the appellee's testator, and also all the other parties to the present suit, who were not plaintiffs in the former suit and upon motion of the district attorney all of said persons were made parties defendant to that suit, and citation ordered to be issued for them, but defendants Stillman, Carson and others, in writing, waived the issuance of citation, and voluntarily entered their appearance and submitted themselves to the jurisdiction of the court in that suit, and those not appearing were served with citation.

7. The object *in* purpose of the United States in intervening in the former suit, pleading outstanding titles in said persons and having them made parties to that suit, as shown by their pleadings and the allegations of the bill in the present suit, were to secure a final and speedy adjudication of the true title to Fort Brown reservation and to have that title vested in the United States by adjudgement to be rendered in said former suit, and then to make compensation to the owners of the land. It appears from the averments of the bill that the true intendment of the act of Congress in making the appropriation to pay for Fort Brown is: (1) That the United States should part with no portion of said fund until a good, valid, absolute and indefeasible title to Fort Brown reservation should be vested in the United States; and (2) that the full price for said reservation, including rents, should be paid directly to the real, *bona fide* owners of the property. The Government desired to speedily acquire a clear title to the property and pay the owners for it, and it, the Government, sought to consummate this purpose and carry out the policy of the statute by intervening in the former suit.

206 8. It appears from the bill and exhibits that to the former suit, No. 248, at law, *they* were twenty-four defendants, all of whom answered, and all of them, except the United States and Col. Kellogg, filed pleas in reconvention, claiming title to portions of said tract of land which claims all conflicted with each other. The pleadings of the parties are in substance set out in the bill, and the portions of the land claimed by each of the claimants is stated. It is averred in the bill that the pleadings in suit No. 248 presented to the court for its examination, consideration and adjudication, a case of facts and of law of the greatest intricacy, difficulty and complexity, requiring great skill, labor, care, patience and perhaps, years of litigation for its final solution; and without some compromise or agreement, whereby an indefeasible title to said property could be at once vested in the United States, there was great danger that the appropriation could not be made available, or would be ultimately consumed in litigation or in some manner lost to the owners of the property, and that, in view of the great number of persons claiming an interest in the property, the nature of the facts and circumstances upon

which alleged titles were based, and the ancient character of some of the alleged titles, and the frequent and complicated character of the transfers of said property during forty years, and the long duration of the controversy between the United States and the owners and claimants of the property, and the great number of deaths and descents cast and devises made, and the difficult and complicated questions of law arising upon the facts, it was absolutely impossible to make a valid title of said reservation to the United States, except through the judgement of the court in said suit No. 248; and when the issues were fully made by the pleadings in said suit, the parties and their counsel at once became fully impressed with these difficulties and the great importance and necessity of removing them, and became and were exceedingly desirous of agreeing upon some plan whereby a valid title to said reservation could be immediately vested in the United States in and by means of a judgement of the court in said suit, followed by proper conveyances with the view of having the real issues made by the pleadings settled after the title should be vested in the United States and the appropriation secured to those parties who should thereafter be found entitled to receive the same.

9. It is averred in the bill, and fully shown by Exhibit "D," that on July 13, 1887, the plaintiff, defendants Stillman and Carson, and nineteen other parties to said former suit, No. 248, executed,
207 acknowledged and delivered an agreement in which it was recited as follows: (1) That it was likely that the said suit would be called for trial the following day, and the then present term of court would not continue further than that week; and (2) that there was little probability of working out a complete and accurate adjudication of the rights of the parties to the suit (who claimed fractional interests in said land) by the judgement of the court "based on the verdict of the inevitable jury;" and (3) that it was apprehended that unless in that court, and by its judgement, a perfect title could be adjudicated to certain of the parties, so as to meet the requirements of the Washington authorities, there was danger of losing altogether the appropriation of $160,000 made to pay for Fort Brown reservation; and (4) it was primarily desirable and necessary to have such a verdict and judgement in said suit as would be attended with no complication and would be satisfactory to the department at Washington; and (5) it was secondarily desirable to agree upon a method of working out and ascertaining the exact rights and interests of each party to the suit *after* the judgement and conveyance to the Government by the parties so adjudicated to be the owners, and the payment of the $160,000 therefor. And in said agreement it was stipulated to the following effect, viz: (1) That in the trial of said suit the issues made by the pleadings therein should not be litigated nor adjudicated, but that a verdict and judgement should be rendered and entered therein, vesting the complete title to Fort Brown reservation, and all money owing by the United States for its use and occupation, in defendants James

Stillman and Thomas Carson, administrator; (2) that upon procuring such verdict and judgement Stillman and Carson should make the appropriate deed of conveyance vesting a good and valid title in and to said reservation and the rents, in the Government of the United States, and a warrant should be procured and obtained by them from the Secretary of War upon the Treasurer of the United States for the said fund of $160,000 appropriated as aforesaid, and $20,000 of said fund should be immediately paid to certain agents at Washington, D. C., for services in procuring said appropriation, and that the balance of said fund ($140,000) should without delay be deposited in the bank of Ball, Hutchings & Co. of the city of Galveston, Texas, to the credit of Messrs. William P. Ballinger, T. N. Waul and David B. Culberson, arbitrators, selected in and by said agreement for the purposes in said agreement stipulated and to the effect in the bill set out; (3) that the parties to said suit by said agreement submitted their respective claims to said Fort Brown reservation and to said fund of $160,000, and the avails thereof, to the arbitration,
208 determination and award of said Ballinger, Waul and Culberson, or any two of them, which should be final and conclusive of all such claims and rights and the issues made by the pleadings in said suit No. 248, and that upon the decision of said arbitrators the said fund, less certain expenses in said agreement provided for, should be immediately paid by the arbitrators to the prevailing parties, according to their respective rights as found and determined by the decision and award. (4) It was provided in the agreement that if either or any of said arbitrators should fail or refuse to act, others should be appointed in the manner therein stated; (5) that the arbitrators should go to the city of Brownsville as soon as practicable, and there try, arbitrate, award, judge and determine each and every of said respective claims and demands, and order the payment and distribution, and make distribution accordingly, of said fund, and the award of any two of the arbitrators should be binding and conclusive upon said parties and fund.

10. It is averred in the bill that on July 14, 1887, a verdict and judgement were, by the consent of parties and in conformity to said agreement, rendered and entered in said suit in and by which defendants Stillman and Carson recovered the title and possession of the whole of Fort Brown reservation and the claims for use and occupation, against all of the parties to said suit, including Col. Kellogg and the United States.

11. It is averred in the bill that on the formal trial in suit No. 248, the issues made by the pleadings were not contested nor litigated, nor the rights of the parties adjudicated; that no evidence was offered upon said trial upon any of the issues made by the pleadings.

12. It is averred in the bill that the title to Fort Brown reservation was by said judgement vested in Stillman and Carson in trust for the use and benefit of all the parties to suit No. 248, and for the

purposes stipulated in said agreement, and that Stillman and Carson accepted the title to said property as trustees for said use and purposes.

13. It is alleged in the bill that Mr. Kleberg, U. S. district attorney, though he did not sign the same, was nevertheless a party to the agreement of July 13, 1887, for the United States, and consented to the judgement of July 14, 1887, and the United States have accepted the benefit of said agreement and judgement, and that it was the understanding of the court which rendered the judgement vested in Stillman and Carson, in trust, for the purposes mentioned in said agreement, and for none other.

209 14. It is averred in the bill that, on April 26, 1895, pursuant to the agreement and judgement, Stillman and Carson delivered to the United States their deeds and releases to Fort Brown reservation and the claims for use and occupation, and received from the United States Treasury the full amount of $160,000 appropriated to pay for same, and that they received said sum in trust and as trustees, as provided in said agreement.

15. It is alleged that Stillman and Carson fraudulently concealed from plaintiff and the other claimants the fact that they had collected the fund, and fraudulently appropriated and converted the whole of the $160,000 to their own use and benefit, and are fraudulently using the judgement of July 14, 1887, by which the title of the land was vested in them in trust, for the purpose of defrauding all the claimants of any and all benefit of said judgement and of their interest in said fund and claim and right to said land, and are conspiring with each other and with other persons, for the purpose of fraudulently preventing and defeating a decision and settlement of the conflicting claims to said land and funds and a distribution of the fund to the true owners thereof by arbitration; that Mr. Ballinger, one of the arbitrators, has departed this life, and another one has declined to act, and Stillman and Carson decline to supply their places and proceed with the arbitration as provided in the agreement, and refuse to account for the trust fund of $160,000, and refuse to recognize the rights of the other claimants in said fund, and refuse to give plaintiff and the other claimants any information whatever concerning said fund.

16. It is shown by the averments of the bill and exhibits that the conflicting claims to Fort Brown reservation and said fund, and the various issues raises in regard thereto by the record and pleadings in suit No. 248, are now and remain, wholly undetermined, undecided and unadjusted; that Stillman and Carson have by their wrongful acts defeated the plans for arbitration and rendered necessary an application to this court for a continuation and completion and final adjudication of all the issues raised and partly litigated in the former suit, and for an adjudication of the respective claims to said fund.

17. It is averred in the bill that defendant Carson is a citizen of the State of Texas, and resides at Brownsville, Cameron county, Texas; that so far as visible property in this State, except such as is

by law exempt from seizure and sale under execution or attachment, and that he, Carson, is the duly and lawfully authorized agent of defendant Stillman in Texas, and represents their mutual
210 interests in resisting all efforts of the said claimants to compel an accounting by them of the trust fund of $160,000.

18. The bill states the names of the attorneys of record of all the parties in the former suit, and it is shown that in that suit defendant Stillman was represented by Mr. Jas. R. Cox, of New York, and Messrs. Ballinger, Mott & Terry, of Galveston, Texas, and that the last named firm also represented defendant Carson.

19. The prayer of the bill is, (1) that an interlocutory decree be made requiring defendants Stillman and Carson to deposit the fund of $160,000 in the registry of the court, or pay it to a receiver, as the court might direct; (2) that all the conflicting claims of the claimants of said land, and fund as the representative of the land, be investigated, considered, adjudicated and settled in this suit; (3) that defendants Stillman and Carson be enjoined from making fraudulent use of said judgement — be enforced by the court; (4) that on final hearing plaintiff have a decree against Stillman and Carson and the estate of Cavazos for one-half of the fund, interest and cost, and that the other one-half be paid to the claimants found by the decree of the court entitled to the same; (5) there is the usual prayer to make parties defendant, and for process and service and for general relief.

One June 25, 1897, an order for substituted service, at the application of complainant, was issued by the court, granting that subpœna issue directed to James Stillman, to be served by the marshal of the eastern district of Texas, upon M. F. Mott, the attorney of record of Stillman in the action at law, No. 248, and granting further that subpœna issue directed to James Stillman, to be served upon him by the marshal of the southern district of New York. The marshal's return on the subpœna served upon M. F. Mott shows that Mott requests the marshal to state in his return that he does not represent James Stillman. In accordance with the order of court, James Stillman was served with subpœna by the marshal of the southern district of New York. On June 14, 1897, complainant applies, by motion to the court, for an interlocutory decree, requiring said fund of $160,000 to be paid into court, or for a receiver to be appointed by the court, and for the issuance of temporary writs of injunction as prayed for in his bill. The hearing of this motion was set down for July 15, 1897, at Austin, Texas, and service of the motion and time of hearing was served through the postoffice by registered mail on M. F. Mott and James Stillman. On July
211 15, 1897, Thomas Carson for himself and as administrator, etc., filed his reply to the motion for injunction and receiver, and showing cause why the motion should not be granted states under oath that no part of said $160,000 was ever received by him or held by anyone under his direction or control. He further answers and shows, but not under oath, that all of the parties are not before the court, that James Stillman is beyond the jurisdiction of the

court, that the original action at law No. 248, and all the issues raised therein have been determined and adjudicated by a final judgment duly rendered and enforced, that the agreement to arbitrate was not filed in the action at law; that there was no fund in the court or within the custody of this district; that a breach of the independent agreement can only be remedied by an independent suit; that complainant and defendant Carsons are citizens of Texas; that the court is without jurisdiction, that the fund sought is not within the custody of the court or subject to its process, that the suit is not dependent or ancillary or a continuation of the action at law No. 248, and that the bill is without equity.

The foregoing statement shows the case as it was presented to the circuit court and on which that court passed its decree adjudging that it had no jurisdiction of the cause as being a suit ancillary to the case No. 248 on the law docket of the court, and proceeded to appoint a receiver to take charge of the fund, under the direction of the court, pending the progress of proceedings in the suit, and, in connection therewith, enjoining the defendants Carson and Stillman from using the judgment in the law case for the purpose of depriving the plaintiff and other defendants in the suit of their interest in the fund, and from refusing to pay the same into the hands of the receiver, and from refusing to account to the court therefor.

The errors assigned are, 1. That the court erred in holding that it had jurisdiction in this suit, naming four grounds to support
212 this assignment. The 2, 3 and 4 errors assigned are to the effect that the *the* court erred in granting an injunction herein and in appointing a receiver. The case presented by the bill and its exhibits shows a large trust fund held by the defendants Carson and Stillman as trustees for the other defendants and for the complainant; that the trustees have renounced their trust a*b*d are refusing to execute it or to take steps to cause it to be executed; that the original provisions for its execution through the aid of arbitrators cannot now be effective, and that to fix the distributive shares of the beneficiaries it becomes necessary to resort to a court of equity; that the nature of the claims of the beneficiaries is such that it will require a considerable time to adjust and fix the respective shares of the distributees; that pending the progress of this proceeding adequate measures should be taken for the safekeeping and control of the fund, under the direction of the court. In such a state of case it cannot be seriously questioned that the chancellor would be authorized, if not required, to take care to preserve the fund. Nor can it be seriously urged that the appointment of a receiver, to be the hand of the court in doing that work, was an unusual or improvident exercise of the chancellor's authority. And the injunction granted in aid thereof if not necessary was not hurtful. An interlocutory decree appointing a receiver will not support an appeal. (Highland Avenue & Belt Railroad Company *v.* Columbia Equipment Company, decided by Supreme Court, January 3, 1898.) And when such a decree appointing a receiver embraces, as in this case,

the granting of an injunction, there may be no necessary connection between these different parts of the decree, and the part granting the injunction may be reversed without affecting the other part. It is true that on appeal the circuit court of appeals will consider the whole case and will determine upon the whole case whether it should take further action than the disposition of the injunction on
213 the merits requires. (Atlanta & Florida Railroad Company *v.* Western Railway of Alabama, 2 U. S. App., 227; Smith *v.* Vulcan Iron Works, 165 U. S., 518.)

It is clear upon the face of this record and from all the argument of counsel, both by brief and orally in the presence of the court, that the real question involved in this appeal and underlying the whole assignment of errors, and giving the only substantial support that any of the specifications can rest upon, is the question of the jurisdiction of the circuit court for the western district of Texas to entertain the complainant's bill. The circuit courts of the United States being courts of limited jurisdiction, the matter of jurisdiction is in every case one of supreme concern. In some cases, however, the jurisdiction of the court, or the want of it, is so apparent as to be beyond serious question, and in very many cases a question of jurisdiction is attempted to be raised on wholly unsubstantial ground. This case does not fall within either of these classes, but is clearly one where the matter of jurisdiction is not only as always of paramount concern, but the question arising with reference to it is grave. It is of such gravity and vital character that, in our opinion, the appeal allowed from the interlocutory decree should not be suffered to become the vehicle of bringing it up, for premature determination. In any case in which the jurisdiction of the court is in issue the wisdom of our laws gives a direct appeal to the supreme court, by certifying the question to that court and asking for its instruction. It is true also that unless the question is carried to the Supreme Court by our request for instruction it cannot reach that high tribunal until after final hearing of the suit in the circuit court. (McLish *v.* Roff, 141 U. S., 661.) But the reason which makes this delay the established procedure in a direct appeal to the Supreme Court in any case in which the jurisdiction of the court is in issue, is strongly persuasive to our minds that in such a case as this we should not pass on that issue on an interlocutory appeal, but
214 should dispose of the matter of injunction on the merits, and suffer the issue as to the jurisdiction of the court to rest on the decision of the circuit court until the suit shall proceed to the hearing and to the passing of the final decree, when the parties aggrieved can have their election of appeals, as clearly pointed out to them in McLish *v.* Roff (*supra*).

If it does not clearly appear upon the face of the record that the action No. 248 was begun, conducted and concluded on an agreement of all parties that the legal title of the land to the Fort Brown reservation, and the rents due for its occupation, should be as speedily as possible assured to the United States, in order that the

contesting claimants should transfer their claims from the land which they did not expect or wish to recover, to the appropriation which had then recently been made by Congress after long and active solicitation by or on behalf of the parties, it is at least strongly implied from the conduct of all the parties, as shown by the face of the record, that the allegations of the bill in this case in that regard are true; and, without the allegations of the bill, such a state of case would have been presumed by anyone conversant with the conduct of litigated controversies affecting such numerous parties and large values. A strong conclusion of fact would take hold of the experienced observer that there was underlying the judgment in that case an agreement substantially similar to that which the bill in this case shows to have been made. The act making the appropriation was a public act, of which the court had judicial cognizance and doubtless actual knowledge. The court was held at a point on, or in sight of the Fort Brown reservation, and the manner of its original occupation, and of its continued use by the Government, was matter not only of local but of public history. The action that the United States district attorney had taken in the case and the elaborate pleadings of the numerous parties, filed in court only one day before the final judgment, exclude all doubt as to that officer's knowledge of the existence and substantial terms of the agreement that was the true basis of the judgment.

If the circuit court for the western district of Texas had not jurisdiction of the complainant's bill, such want of jurisdiction does not spring from the nature of the obligations charged to have been assumed by certain of the defendants in the bill and the rights claimed by the complainant for himself and for the other defendants, or from the nature of the relief sought to be obtained, but from the state of the parties and from some force claimed to inhere in the nature of a judgment at law. To the eye of natural justice it would seem that if that court has not jurisdiction of the parties to the agreement that was in truth the basis of its judgment in cause No. 248, with power to protect the beneficiaries in the trust clearly created by that agreement, and which has so far borne fruit as to bring into the possession of the trustees the fund which was the material subject not only of the agreement, but of that litigation, its jurisdiction, proceedings and processes have been successfully misused by the parties sought by this bill to be charged as trustees.

Under all the circumstances of the condition in this case and the allowance in this appeal, suggested in our foregoing remarks, we deem it best, pending proceedings to a final hearing in the circuit court, to concur for the time being with that court on this question of jurisdiction, and leave it to the parties, after the passing of a final decree, to take the question of jurisdiction, if they so desire, to the Supreme Court in the manner provided by law.

On the grounds stated, and for the reasons suggested, the decree appealed from is affirmed.

Endorsed: Eq. 21. Offered in evidence by compl'ts. Filed May 20, 1903. C. Dart clerk.

216 In the Circuit Court of the United States for the Western District of Texas, at Brownsville.

HEIRS OF MIGUEL SALINA
vs.
WM. L. KELLOGG. } No. 248.

To the Honorable E. P. Turner, judge of said court:

Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, residing in Cameron county Texas, in which county the administration of said estate is pending, respectfully represents unto your honor.

That, on the 29th, day of June, A. D. 1886, plaintiffs in the above entitled and numbered cause brought their suit of trespass to try title in the district court of Cameron county against the defendand who is a major in the regular army of the United States, and was then in command of the army post at Brownsville, known as Fort Brown, containing about one hundred and fifty acres, more or less, on which are situated barracks, and other public buildings of the Government. The petition alleged that plaintiffs were the owners of the said property and sought recovery and possession thereof from the said defendant. That on the 30th, day of June, 1886 H. E. Woodhouse intervened in said cause setting up ownership in himself of the respective interests of Hijinio Salinas, Jose Maria Salinas, Alejandra Salinas, and Bernardo Salinas, praying the same be set apart to him.

Upon the application of defendant the cause was removed to this honorable court. and at the January term, 1887, R. Kleberg, Esq., U. S. district attorney for the western district of Texas, being thereunto instructed by the Attorney General of the United States, appeared in behalf of the defendant and also made himself in the said official capacity a party, and amongst other pleas set up outstanding title in the following named persons, a-d prayed that they be made parties defendant for the better adjudication of the title to the land in controversy, to wit:—Charles S. Dana and wife, of Boston, Mass.,

B. O. Hicks, guardian of Frances E. Powers, of Brownsville,
217 Texas, B. O. Hicks, and Chas. B. Combe, executor of Stephen Powers, deceased, of Brownsville, Texas B. O. Hicks and wife, of Brownsville, James A. Browne & wife of Brownsville, Frances E. Powees, Mat Gerhard, Francisco Yturria, Juan Salinas, Vicente Salinas, Thomas Carson, administrator of estate of Maria Josefa Cavazos, dec'd., Chas. B. Combe and wife, Charlotte Miller, Filicita Salinas, and Andrea Salinas, all of Cameron county. Henry Miller of the State of Illinois, H. E. Woodhouse, of Cameron county, Pedro G. Cavazos of Mexico, and James Stillman of New York.

That on the 6th, day of January, 1887, your honor granted the said application, and directed that the above named parties be made defendants in this cause, and that the clerk of this court issue citations, as the law directs to each of the persons named therein. That all of the said named parties with the exception of the said Henry Miller have been brought into court, either by legal service of process or by waiver of process and voluntary appearance; and the cause will be ready for trial as soon as legal service can be had on the said Henry Miller.

He further represents that in the said application of the district attorney, the said Henry Miller was represented as a citizen of the State of Illinois, and that no process could be issued to him by the clerk without further and additional order of your honor in the premises. That the said Henry Miller is a resident and citizen of the city of Chicago, in the county of Cook, in the State *if* Illinois, of which place he was a resident and citizen at the time he was interpleaded as a party defendant in this cause as hereinbefore stated.

That the estate of the said Maria Josefa Cavazos is largely interested in the property in controversy in this suit, and that it is to the interest of all parties, including the Government that there should be a speedy adjudication and determination of the title. That the said Henry Miller is not and will not be within the said western district of Texas, and petitioner is informed, and so states that he has not and will not make voluntary appearance in this cause.

The premises considered the said Carson prays that your honor will be pleased to grant an order directing the said Henry Miller to appear and answer in this cause by the 1st, day of July, 1887,
218 requiring the clerk to make out a certified copy of said order and send the same to the United States marshal for the northern district Illinois, and by him to be served upon the said Miller and returned as in cases of other process. And for such other order as your honor may be pleased to grant in the premises, looking to proper and legal process upon the said Miller.

BALLINGER, MOTT & TERRY,
Att'ys for Thos. Carson, Adm'r.

In this cause it being made to appear that one of the defendants viz., Henry Miller, is a citizen of the State of Illinois, and resident in the city of Chicago, that he is not found in this district and has not made voluntary appearance in the case. It is ordered that the said defendant *to* appear, plead, answer, or demur, to the p'ff's petition in this cause on or before the first day in July, 1887, and it is further ordered that the clerk of this court issue process to said defendant notifying him of the pending of this suit and of this order directed to the marshal of the northern district of Illinois, as prayed for in the within application.

May 16, 1887.

E. B. TURNER, *Judge.*

Endorsed: No. 248 U. S. circuit court, west. dist. of Texas. Heirs of Salinas, *vs.* Wm. L. Kellogg. Application for order to serve absent defendant. Filed May, 23, A. D. 1887. Chas. F. Tilghman, clerk. Refiled in No. 21 equity. C. B. Combe, ex'r. *vs.* James Stillman, *et al.* Filed, July, 15th, 1897 D. H. Hart, clerk, by A. Grosenbacher, deputy. In the circuit court of the United States, in and for the western district of Texas, at Brownsville.

219 *Petition of Plaintiffs for Process for Defendants Charles S. Dana and Maria Grogan Dana, to be Served upon J. B. Wells, Attorney of Record, and upon said Defendants.*

C. B. COMBE, EX'R, *vs.* JAMES STILLMAN ET AL. } No. 21. In Equity.

Suit pending in the United States circuit court, western district Texas, Brownsville division.

To the judges of said court:

The petition of the plaintiff, C. B. Combe, ex'r, respectfully shows unto your honors that on July 14th, 1897, he filed his bill in the above stated cause against James Stillman and twenty-one other persons; that as shown by the facts alleged in said bill, this suit is ancillary to suit No. 248 on the law docket of this court, and all the parties to this suit were parties to the former suit; that it is alleged in the bill that defendants Charles S. Dana and his wife Maria Grogan Dana are citizens and residents of the State of Massachusetts, and the city of Boston, and in the former suit they — represented by their attorneys of record, Wells & Hicks, a firm composed of Jas. B. Wells and B. O. Hicks, both residents of Brownsville, Texas; that said Hicks is now deceased, and said Wells still resides in Brownsville, Cameron county, Texas; and said bill prays that subpœna for said defendants Charles S. Dana and Maria Grogan Dana, be served upon them by service upon their attorneys of record in the former suit, or upon the said defendants in the district where they may be found; a copy of said bill is herewith submitted to the court.

Wherefore petitioner prays that an order be now made and entered directing that subpœnas be issued upon said bill for defendants Charles S. Dana and Maria Grogan Dana, and served by
220 the marshal of the western district of Texas upon J. B. Wells, the attorney of record of said defendants in said former suit and that such service be deemed good service upon said defendants, or that subpœnas be served by the marshal of the district of Massachusetts upon said defendants Charles S. Dana and Maria Grogan

Dana in person, or upon them and their said attorney, as the court may deem advisable and just.

W. N. PARKS,
C. L. BATES,
Counsel for the Plaintiff.

Endorsed: No. 21 Equity. C. B. Combe, executor, *vs.* Jas. Stillman, *et al.* Petition of plaintiff for process for defendants Charles S. Dana and Maria Grogan Dana, to be served upon J. B. Wells, attorney of record, and upon said defendants. Filed June 6, 1898. D. H. Hart, clerk.

221 *Order of Court Directing Subpœna to Charles S. Dana and Maria Grogan Dana.*

U. S. Circuit Court, Western Dist. of Texas, Brownsville Division.

C. B. COMBE, EX., *v.* JAS. STILLMAN ET AL. } No. 21. In Equity.

Be it remembered that in the above stated cause, on July 6, 1898, in open court at Austin, Texas, upon application of plaintiff:

It is ordered, adjudged and decreed by the court that the writ of subpœna do issue upon plaintiff's bill directed to Chas. S. Dana and Maria Grogan Dana, requiring them to appear, plead, answer or demur by the rule day in September, 1898, and which subpœnas shall be served by the rule day in August, 1898, and that the same be served upon them in person by the United States marshal for the district of Massachusetts; and that an alias subpœna be issued to said defendants and that the same be served upon them by service upon J. B. Wells, their attorneys of record in said court, said alias to be served by the marshal of the western district of Texas. But this order is made subject to any valid exception by the parties to this suit.

It is further ordered, adjudged and decreed by the court that this order be entered upon the minutes in the Austin division, and upon the order book in the Brownsville division; and that the written application for this order be filed here, and then filed with the papers in this cause at Brownsville, Texas.

Ordered, adjudged and decreed in open court at Austin,
222 Texas, July 6, 1898.

T. S. MAXEY, *Judge.*

Endorsed: No. 21 Equity. C. B. Combe, ex'r, *et al. vs.* James Stillman, *et al.* Order of court directing subpœna to Charles S. Dana and Maria Grogan Dana. Filed. Entered July 12/98. Entered and filed July 6, 1898. D. H. Hart, clerk?

223 *Subpœna in Chancery for Charles S. Dana.*

No. 21. Equity.

Subpœna in Chancery.

The President of the United States to Charles S. Dana, Boston, Mass., Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in September, A. D. 1898, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court, on the 14th day of June, 1897, against Thomas Carson, as administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and in his own right, Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Vicente Salinas, Francisco Yturria, R. D. Hinojosa, Juan Salinas, and H. E. Woodhouse of Brownsville, Texas; Henry Miller of Chicago, Illinois, and Charlotte Miller of Brownsville, Texas; Mat Gerhardt of Los Angeles, Cal.; Charles S. Dana and his wife Maria Grogan Dana, of Boston, Mass., and James Stillman of New York city, New York, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the United States, and the seal of said circuit court hereunto affixed, at Brownsville, 12th day of July, 1898.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By CHARLES F. TIGHLMAN, *Deputy.*

224 The defendant, Charles S. Dana, is required to enter his appearance in the above suit on or before the first Monday in September, 1898, otherwise the bill of complaint filed against him will be taken *pro confesso.*

D. H. HART, *Clerk,*
By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21 Equity. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, executor, *vs.* James Stillman, *et al.* Subpœna in chancery, Issued July 12, 1898. Returnable August 1st, 1898. D. H. Hart, clerk. Original for Charles S. Dana, Boston, Mass. Filed August 19, 1898. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

UNITED STATES OF AMERICA, *Massachusetts District*, } *ss:*

BOSTON, *August* 10, 1898.

I hereby certify that I have made diligent search for the within named Charles S. Dana, but failed to find him or any agent or attorney on whom I could make service, and I am informed and believe that the said Dana is now in Europe.

F. X. MACDONALD,
Deputy U. S. Marshal.

225 *Subpœna in Chancery for Marie Grogan Dana.*

No. 21.

Subpœna in Chancery.

The President of the United States to Marie Grogan Dana, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in February, A. D. 1900, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on the 14th day of June, 1897, against James Stillman and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, hereunto affixed at Brownsville this 30th day of December, 1899.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By CHARLES F. TIGHLMAN, *Deputy.*

The defendant, Marie Grogan Dana, is required to enter *his* appearance in the above suit, on or before the 1st Monday in February, 1900, otherwise the bill of complaint filed against *him* will be taken *pro confesso.*

D. H. HART, *Clerk,*
By CHARLES F. TIGHLMAN, *Deputy.*

226 Endorsed: No. 21 Equity. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, ex'r, *vs.* James Stillman, *et al.* Alias subpœna in chancery. Issued Dec'r 30, 1899, returnable —— 1900. D. H. Hart, clerk. Copy for Marie Grogan Dana, Boston, Mass. Filed Jan'y 17, 1900. D. H. Hart, clerk, by C. F. Tighlman, deputy.

UNITED STATES OF AMERICA, *District of Massachusetts,* } *ss:*

BOSTON, *January 9th*, 1900.

Pursuant hereunto I have summoned the within named Maria Grogan Dana to appear as herein directed by leaving at her last and usual place of abode, 300 Berkley street, Boston, this day in hand to Miss Minnie Quilty, a domestic a duly attested copy of this precept.

ALBERS TUTTLE,
Deputy U. S. Marshall.

Fees.

Service	$2.00
Travel	.12
	$2.12

227 *Subpœna in Chancery for Charles S. Dana.*

No. 21. Equity.

Subpœna in Chancery.

The President of the United States to Charles S. Dana, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable, the United States circuit court for the western district of Texas, at Brownsville in chancery sitting, on or before the first Monday in September, A. D. 1898, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on 14th day of June, 1897, against Thomas Carson, as administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and in his own right, Leocadio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, Francisco Yturria, R. D. Hinojosa, and H. E. Woodhouse, of Brownsville, Texas, Henry Miller, of Chicago, Illinois, and Charlotte Miller, of Brownsville, Texas, Mat Gerhard, of Los Angeles, California, Charles S. Dana and his wife Marie Grogan Dana, of Boston,

Mass., and James Stillman, of New York city, New York, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice [SEAL.] of the United States, and the seal of said circuit court hereunto affixed at Brownsville, 12th day of July, 1898.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By CHARLES F. TIGHLMAN, *Deputy.*

228 The defendant Charles S. Dana is required to enter his appearance in the above suit on or before the first Monday in September, 1898, otherwise the bill of complaint filed against him will be taken *pro confesso.*

D. H. HART, *Clerk,*
By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21 Equity. United States circuit court, western district of Texas, at Brownsville, C. B. Combe, ex'r, vs. James Stillman, *et al.* Subpœna in chancery. Issued July 12, 1898, returnable August 1st, 1898. D. H. Hart, clerk. Original for Charles S. Dana, to be served on J. B. Wells, Esq., his attorney of record. Filed July 29, 1898. D. H. Hart, cl'k, by C. F. Tighlman, deputy.

Marshal's Return.

Came to hand this the 28th day of July, A. D. 1898, and executed this 28th day of July, A. D. 1898, by delivering to James B. Wells, Esqr. in person in the city of Brownsville, State of Texas, attorney of record for Charles S. Dana, a true copy of this writ. At the time of serving said process upon said James B. Wells, he stated to me that he did not at all admit that he, the said Wells, was attorney of record or at all in this cause for either of the said defendants Chas. S. Dana or Maria Grogan Dana, his wife, or at all authorized to receive or accept service of said process and asked that I so return the facts.

GEO. L. SIEBRECHT,
U. S. Marshal, W. D. of T.,
By JOHN M. HAYNES, *Deputy.*

229 *Subpœna in Chancery for Maria Grogan Dana.*

No. 21. Equity.

Subpœna in Chancery.

The President of the United States to Maria Grogan Dana, Boston, Mass., Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in September, A. D. 1898, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on 14th day of June, 1897, against Thomas Carson, as administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and in his own right, Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, Francisco Yturria, R. D. Hinojosa, and H. E. Woodhouse of Brownsville, Texas; Henry Miller, of Chicago, Ills., and Charlotte Miller of Brownsville, Texas; Mat Gerhardt of Los Angeles, California; Charles S. Dana and his wife Maria Grogan Dana, of Boston, Mass.; and James Stillman of New York city, New York, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the United States, and the seal of said circuit court hereunto affixed at Brownsville, 12th, day of July, 1898.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By CHARLES F. TIGHLMAN, *Deputy.*

230 The defendant, Maria Grogan Dana, is required to enter *his* appearance in the above suit on or before the first Monday in September, 1898, otherwise the bill of complaint filed against *him* will be taken *pro confesso.*

D. H. HART, *Clerk,*
By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21 Equity. United States circuit court, western district of Texas, at Brownsville, C. B. Combe, executor *vs.* James Stillman, *et al.* Subpœna in chancery, issued July 12, 1898. Returnable August 1st, 1898. D. H. Hart, clerk. Original for Marie Grogan Dana, Boston, Mass. Filed August 19th, 1898. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

UNITED STATES OF AMERICA, *District of Massachusetts*, } *ss*:

BOSTON, *August* 10, 1898.

I hereby certify that I have made search for the within named Maria Grogan Dana, but failed to find her or any agent or attorney of said Dana on whom I could make service. And I am informed and believe that the said Maria Grogan Dana is now in Europe.

F. X. MACDONALD,
Deputy U. S. Marshal.

231 *Plaintiff's Amended Bill.*

In the Circuit Court of the United States for the Western District of Texas, Brownsville Division.

C. B. COMBE, Independent Executor of the Last Will and Testament of Stephen Powers, Deceased, Plaintiff,
vs.
JAMES STILLMAN and THOMAS CARSON, Administrator with the Will Annexed of Maria Josefa Cavazos, Deceased, *et al.*, Defendants. } No. 21. In Equity.

Plaintiff's amended bill.

To the honorable the judges of the circuit court of the United States for the western district of Texas, sitting in equity at Brownsville:

1. The plaintiff C. B. Combe, is independent executor of the last will and testament of Stephen Powers, deceased, first having had and obtained leave of the court to amend his original bill in this cause, by making additional parties thereto, both plaintiffs and defendants, and by the averment of additional facts, as he may be advised:

Now, in pursuance of said leave to amend, he, the said plaintiff, C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, comes as such executor and also in his own name, and in his individual right, joined by the following new and additional parties plaintiff, to wit: Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph K. Combe and Emile P. Combe, all of Cameron county, Texas, and bring this their amended bill against James Stillman, Thomas Carson as administrator
232 with the will annexed of Maria Josefa Cavazos, deceased, and in his own right, Francisco Yturria, H. E. Woodhouse, Henry Miller, Charlotte Miller, Charles F. Dana and his wife Marie Grogan Dana, Frances E. Landrum (*née* Powers), Annette P. Hicks, a widow (*née* Impy) Agnes Anastacia Browne, (*nee* Powers) Bernardo

Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salines, Juan Salinas, Vicente Salinas, and R. D. Hinojosa: and thereupon your orators complain and say:

2. The plaintiffs Charles B. Combe, Jr., Frederick J. Combe, Joseph K. Combe and Frank B. Combe, and Emile P. Combe, and the defendants, Frances E. Landrum, Annette P. Hicks, and Agnes Anastacia Brown, are all citizens of the State of Texas, and reside in Cameron county, Texas, except that plaintiff Fredecick J. Combe is now in the service of the United States Army in Cuba and Emile P. Combe is now in business in San Luis Potosi in the Republic of Mexico. The defendant Felicita Salinas is a citizen of the State of Texas and resides at Corpus Christi in Nueces county, Texas, and defendant Jose Maria Salinas, resides at Reynosa in the Republic of Mexico; and defendant Andrea Salinas, resides at Matamoros in said Republic of Mexico.

Matt Gerhard, named as defendant in the original bill, is now deceased, and your orators are informed that he has left a large number of children, whose names and residences cannot be ascertained after diligent search, and it would cause oppressive delay and amount to a practical denial of justice to attempt to make them parties; and the title and interest of said Matt Gerhard, if any he had, is jointly held by his heirs, and defendant Francisco Yturria, Andrea Salinas and Felicita Salinas, who fully represent said interest in this suit, and in this regard this is a representative suit.

Leocardio Salinas, Antonio Salinas, Melchor Salinas, and Higinio Salinas and Alejandro Salinas, named as defendants in the original bill are, as your orators are informed and so allege, now deceased,
and have numerous descendants, whose names *are* residences
233 cannot be ascertained, and it would cause oppressive delay
and amount to a practical denial of justice to attempt to make their descendants parties hereto; and the interest of said descendants, or their descendants, if any they have in this suit, is jointly owned by them and the defendants Bernardo Salinas, Jose Maria Salinas, Juan Salinas, and Vicente Salinas, who fully represent said interests in this regard this is made a representative suit. And the said plaintiffs herein and hereby reaffirm and adopt all the allegations of the original bill filed herein on the 14th day of June, A. D. 1897, except as the same may be herein expressly modified.

3. Mrs. Kate M. Combe, the wife of plaintiff C. B. Combe, executor as aforesaid, and the mother of the other plaintiffs, was one of the four devisees of the will of Stephen Powers, deceased, departed this life on the 10th day of September, A. D. 1887, having first duly executed her last will and testament, which has been duly proved in the probate court of Cameron county, Texas, and in which will she devised and bequeathed all of her interest in the said estate of Stephen Powers, to her said children named as plaintiffs herein.

And Mrs. Annette P. Hicks, Mrs. Frances E. Landrum and Mrs.

Agnes Anastacia Brown, defendants herein, are the other three devisees of the will of said Stephen Powers, deceased.

And the plaintiff C. B. Combe, executor as aforesaid, asserting and maintaining his right to bring and conduct this suit as the sole surviving independent executor of the last will and testament of Stephen Powers, deceased, has by leave of the court made the devisees, legatees and beneficiaries of said will, parties hereto, for the purpose of relieving this suit of the unjust and untruthful dilatory matters interposed to its orderly and speedy progress, with a view to oppressive delay, and the defeat of the rights of the said Stephen Powers estate; and in so amending his bill the said executor does not admit nor confess the truth nor the validity of any such dilatory matters, but avers that they are all untrue in fact and of no validity in law or equity.

234 4. Your orators aver that by inadvertence it was alleged in the 10th section of the original bill that, under the contract of July 13, 1887 (Exhibit D to said original bill) defendants Stillman and Carson were to, after collecting the one hundred and sixty thousand dollars therein mentioned from the Government, immediately pay out of said fund, the sum of $20,000 to certain agents at Washington, D. C. for services in securing said appropriation, and that defendants Stillman and Carson should then without further delay pay the balance of one hundred and forty thousand dollars of said fund into the bank of Ball, Hutchings & Co. at Galveston, to the credit of arbitrators. But plaintiffs upon a further reading of said contract find and so aver that the $20,000 to go to agents at Washington, D. C., was to be paid by the arbitrators in said contract named, and not be defendants Stillman and Carson. And plaintiffs aver that it was and is the intent, meaning and purpose of said contract and all others made in regard to said fund, that the justness and propriety of paying said $20,000.00 and any and all other sums for expenses and services out of said fund of $160,000.00 should be passed upon and decided and determined by arbitrators, or by the owners of said fund, after a full and fair examination of the accounts and claims for such payment, and that the propriety and justness of such payments should not be passed upon nor decided by defendants Stillman and Carson, nor by either of them. And the defendants Stillman and Carson allege and pretend, contrary to the truth, that they and either and each of them, have been given authority by the owners of said fund, to pass upon and determine the justness and propriety of any and all expense accounts and claims made against said fund, and to pay the same out of the fund. But plaintiffs aver that no such power and authority has been given defendants Stillman and Carson, nor to either of them.

And the defendant Stillman alleges and pretends, contrary to the truth, that by an agreement dated January 19th, 1886, made by James B. Wells, Jr., as agent and attorney in fact for plaintiff, C. B. Combe, executor as aforesaid, and others, said Wells agreed
235 to secure out of said fund of $160,000.00 the payment of $5,000 to one Sypher, as a fee for assisting in procuring the

appropriation of said $160,000 and afterwards said Wells as such agent and attorney desired defendants Stillman and Carson to pay said $5,000 to said Sypher out of said fund of $160,000 and that defendants did, in May 1895, pay said Sypher the sum of $5,000, but plaintiffs are informed by Mr. James B. Wells, and believe it to be true, and so aver it to be true, that said Wells requested said Stillman to pay Sypher $5,000 out of, and as a part of the $20,000 agreed in the contract of July 13, 1887, to be paid by arbitrators "to certain agents at Washington who assisted in procuring said appropriation." And plaintiffs aver that neither Mr. Wells, nor anyone else authorized to bind them, ever agreed with Stillman and Carson, or either of them, to pay the Sypher claim, except out of the $20,000 set apart by the agreement of July 13, 1887 to pay the Washington agents.

And defendant Stillman alleges and pretends, contrary to the truth, that he was authorized and empowered by a supplementary contract dated October, 19, 1889, by and between certain parties interested in said fund of $160,000.00 to pay out and disburse the further sum of $25,000 for expenses in collecting said appropriation, and that under and by virtue of the power and authority conferred upon him by said supplementary contract, he, the said defendant Stillman, has actually paid out of said appropriation in expenses for collecting the same, the sum of $26,898.98.

And he alleges contrary to the truth and pretends, that said supplemental contract conferred upon him the power and authority to pass upon the propriety and justness of paying out said additional sum of $25,000. But plaintiffs allege the truth in this regard to be, that said supplemental contract imposed upon the arbitrators to be appointed under the contract of July 13, 1887 the duty of disbursing for expenses the further sum of $25,000 and of determining the justness and propriety of all claims that might be presented against the same; and that no part of said fund for additional ex-
236 penses should be paid until the whole fund of $160,000 should be paid into the hands of the arbitrators, or into the hands of the said parties to said supplemental agreement; and it was further provided in said supplemental agreement that no claim should be paid out of said additional $25,000 except "upon full account and vouchers submitted to the parties," thereto, "their agents, attorneys or arbitrators and found satisfactory and correct and approved by them."

And plaintiffs aver that no part of said fund of $160,000 has ever been paid to said arbitrators, nor to the Powers estate, and no accounts or vouchers have been submitted or approved, as in said supplemental agreement provided for and required; and plaintiffs say that, if defendants Stillman and Carson have, or either of them has paid out any part of said fund of $160,000, which is not admitted, the same was without authority of law and in direct and wilful violation of said contract, and these plaintiffs are not bound thereby, neither is the estate of said Stephen Powers. And the plaintiffs aver that said defendants Stillman and Carson should be compelled to

pay the whole of said fund of one hundred and sixty thousand ($160,000) dollars into the hands of the receiver herein, except the amount paid out for taxes.

Defendant Stillman alleges and pretends, contrary to the truth, that he in good faith has actually paid out of the said appropriation of one hundred and sixty thousand ($160,000.00) dollars, the aggregate sum of sixty thousand ($60,000.00) dollars.

Plaintiffs say that the sum of eight thousand one hundred and one dollar- and two cents ($8,101.02) paid out by Stillman for taxes on the Fort Brown military reservation, was properly paid out, and he is entitled to credit for same. But the balance of said amount, towit: fifty-one thousand eight hundred and ninety-eight dollars and ninety-eight cents ($51,898.98) if paid out at all by Stillman, was paid out by him in bad faith because such payments were in direct and palpable violation of the agreement of the parties and in flagrant violation of the trusts imposed upon him by the said
237 agreements of July 13, 1887, and the judgment of this court rendered on the 14th day of July, 1887, as fully set out in the original bill. Defendant Stillman, plaintiffs aver, is a man of great intelligence and ability as a business man and financier, and is president of the National City Bank of Wall street, New York, and is fully capable of understanding his duty under his agreement with the parties claiming an interest in the Fort Brown fund, and if he has in fact made any disbursements out of said fund, except for the taxes aforesaid, such disbursements were knowingly and willfully made in violation of his duty as a trustee in the agreement of the parties.

5. The defendants Stillman and Carson allege and pretend, contrary to the truth, that at and before the time of the institution of this suit, on June 14th, 1897, the plaintiff C. B. Combe, sole independent executor of the last will and testament of said Stephen Powers, deceased, had fully executed his trust as such executor, and had fully divided and partitioned the estate of Stephen Powers, deceased, and set apart to each of the devisees and legatees of said Powers, his or her share of the same, and delivered to them the possession thereof, and that for a long time they have been in possession, use and enjoyment of same, and that there is no further necessity for administration upon said estate, and that said executor had before instituting this suit, settled and closed his trust, as such executor, and had recognized that his trust as such executor had ended.

Plaintiffs aver that all of said pretenses are utterly and notoriously untrue and false, and were so known to be by both Stillman and Carson at the time of the making thereof, and they were made for the purpose and with the intent to deprive the estate of Stephen Powers, deceased, of the protecting care of said executor, so that it may be the more easily plundered by them. The defendant Carson is judge of Cameron county, Texas, and has so been for many years, and will probably be reëlected to said office, and if this court should

hold that the functions, power and authority of plaintiff, C. B.
238 Combe, executor, as such have ceased, the defendant Carson would then in all probability appoint as administrator of said Powers estate, a person in harmony and accord with the fraudulent designs of himself and defendant Stillman, as set out herein and in the plaintiff executor's original bill.

Plaintiffs aver that the said Powers estate is the owner of and entitled to one-half of the one hundred and sixty thousand (160,000.00) dollars appropriation by the United States Government, to pay for the Fort Brown military reservation, collected by Stillman & Carson, and that the same is still outstanding and still uncollected by him or anyone in behalf of said Powers estate, and it is the duty of this executor of said estate, to collect the same for the benefit of said estate. And said executor was made a party defendant as such executor to suit No. 248, on the law docket of this court, and the agreement of July 13, 1887 (Exhibit D to the original bill) was made with him as such executor, to which agreement Stillman and Carson were parties, and this suit is to recover upon said agreement and the judgment pursuant thereto entered in said cause No. 248, and by virtue of which Stillman and Carson collected the said fund of one hundred and sixty thousand (160,000) dollars; and they are estopped to deny that said C. B. Combe is in fact such executor, and their said pretenses set up for the purpose of defeating this suit, after having obtained the said fund as aforesaid, are absolutely iniquitous. The plaintiffs aver that Stephen Powers died seized and possessed of a large landed estate situated in Cameron county, Texas, and in Hidalgo county, Texas, which he disposed of by his said will. A large part of said landed estate has been partitioned; such partition was had at the instance of said executor C. B. Combe, because the lands so partitioned were not needed as assets to pay debts, and said executor desired the estate delivered to the devise-s of the said will of said Stephen Powers, just as soon as the same could be properly and lawfully done. But the pretense of defendants Stillman and Carson, set up by them in certain sworn pleadings filed by them in this cause, to the effect that, before
239 the filing of this suit the whole of the Powers estate had been divided and partitioned among the devisees and legatees of said Stephen Powers, deceased, is notoriously and flagrantly false and untrue; and it is indeed strange that any person could be found who would make and swear to such a plea.

Since the 22nd day of May, A. D. 1889, down to the present time, the estate of Stephen Powers, deceased, and through said estate the children of Mrs. Kate N. Combe, plaintiffs in this suit, and Mrs. Pauline A. Hicks, Mrs. Frances E. Landrum and Mrs. Agnes A. Brown, defendants in this suit, have, under the will of Stephen Powers, deceased, owned and held as tenants in common with defendant Mrs. Marie Grogan Dana, a tract of land in Cameron county, Texas called the Paredes tract embracing forty-six thousand one hundred and three (46,103) — of land, a part of which tract joins and forms part

of the city of Brownsville; said tract is bounded on the south by the Rio Grande river and on the north by the Arroyo Colorado; said tract is about 30 miles long and about five miles wide, and has on it a large number of tenants, perhaps one hundred or 200 and is one of the most noted tracts of land in Cameron county, Texas. The said estate, and through it the children of Mrs. Kate M. Combe, and the other devisees of said Stephen Powers, deceased, own an undivided five-eighths of said tract, and the said Mrs. Marie Grogan Dana owns an undivided three-eighths of said tract. And the plaintiffs say that many thousands of dollars' rent are due the estate of said Stephen Powers, on said tract; that although large rents have accrued in the hands of the once trusted agents of the executor of said Stephen Powers, estate, yet said agents have attorned to another and for several years said rents have been wrongfully withheld from this executor and the functions of an executor are necessary to collect such rents, and to apply them to the payment of taxes due by said estate. The devise-s of said Stephen Powers are not in actual possession of said Paredes tract of land, nor any part thereof, nor are they receiving the rents, issues and profits of the same. A
240 copy of certain judic-al proceedings showing the state of the title of the said Paredes tract, is hereto attached marked "Exhibit A" and here now referred to and made a part of this amended bill.

And the plaintiffs further aver and show unto the court, that B. O. Hicks, the co-executor, departed this life in November, 1887, after which the plaintiff, C. B. Combe, sole surviving executor, continued to act as such. That some time during the summer of 1889, certain persons for a wrongful purpose set up the claim and pretense, that the death of B. O. Hicks, co-executor, *ipso facto* terminated the power and authority of C. B. Combe, executor, to further act as such, but said C. B. Combe, executor, declined to acquiesce in such pretense and opinion and in the month of October, 1889 he went to Galveston, Texas, for the purpose of, and did then and there submit to Mr. McManus and Messrs. Willie, Mott & Ballinger, attorneys at law of that city, a copy of the will of Stephen Powers, deceased, and requested their opinion as to whether or not the death of his co-executor terminated the power of this executor, and on or about October 8th, 1889, he received from said attorneys at law, a written opinion (a copy of which is hereto attached, marked Exhibit B and here now referred to and made a part of this amended bill) to the effect that his power and authority were not terminated by the death of his co-executor, and said plaintiff executor returned to Brownsville, carrying said written legal opinion with him and upon the face of it declared, and has continuously maintained that he is executor of said estate and has ever since acted as such and has never closed his said trust; and plaintiffs say that, they have abundant reasons to believe, and do believe, and so allege that the contention of the defendants Stillman and Carson to the effect that plaintiff C. B. Combe, executor of the estate of Stephen Powers, deceased, had

prior to the institution of this suit, closed and settled his trust and is no longer authorized to sue as such executor, is part and parcel of an unlawful and fraudulent conspiracy of long standing existing between the defendants Stillman and Carson and other persons, having for its object and purpose the unlawful depri-
241 vation of the said Powers estate of the lawful and legitimate protection of the said C. B. Combe, executor, and the ultimate unlawful acquisition of said estate, or some part thereof; but that, owing to the palpable untenability of the original grounds of such contention as a legal proposition before an honest and intelligent court, the said original ground of said contention has been abandoned by the conspirators as a prudential measure, and the said conspirators have substituted therefor the untruthful and false contention now urged, that the trust of said C. B. Combe, executor, was closed and settled before the institution of this suit.

6. The defendant Carson alleges and pretends, contrary to the truth, that no part of said fund of one hundred and sixty thousand dollars was ever collected or received by him and that he has never had any control of said fund. But plaintiffs allege the fact to be that defendants Stillman and Carson appointed one John A. Garver, their lawful agent, to collect and receipt for the said fund of one hundred and sixty thousand (160,000) dollars from the United States Government, and on or about April 26th, 1895, the said John A. Garver, acting as the lawfully constituted agent of defendants Stillman and Carson, did collect from the Government the whole amount of said fund of one hundred and sixty thousand dollars, and delivered to the lawfully constituted authority of the United States Government the receipt of said defendants Stillman and Carson, executed by him as their attorney; as fully appears from exemplified copies of certain records of the War Department and Treasury Department on file in this suit as exhibits to the complaint and information against Stillman and Carson for contempt, which exemplifications of records are made Exhibit C hereto and here now referred to and made a part of this amended bill.

7. And plaintiffs aver that at his death Stephen Powers owned more than one-half of said Fort Brown military reservation, and that said Stephen Powers' estate owns at least one-half of the said fund of one hundred and sixty-thousand (160,000) dollars.
242 And the plaintiffs attach hereto, a duly certified copy of the record in the said suit No. 248, on the law docket of this court, marked Exhibit E, and here now referred to and made a part of this amended bill.

8. And the plaintiffs further say, that all the aforesaid actings, doings, and pretenses of the aforesaid defendants Stillman and Carson, as charged against them in the plaintiff C. B. Combe, executor's original bill, and in this their bill of amendment thereto, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of plaintiffs in the premises, in consideration

whereof, and for as much as your plaintiffs are remediless in the premises at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable.

9. Wherefore the plaintiffs pray that all the persons above named and designated as defendants, be made defendants to this amended bill and the said original bill heretofore filed in this cause by the said plaintiff executor C. B. Combe, and that they be required to answer thereto, but not under oath, the oath to answers being here now expressly waived, except as to the interrogatories as specified in the original bill, and that subpœnas issue and publication be made, as authorized by law, except as to those defendants already served; and the plaintiffs pray for all necessary and proper process and orders in the prosecution of this suit; and they further pray for relief as heretofore prayed for in the original bill filed by the plaintiff C. B. Combe, executor as aforesaid, and for such further or other relief as *as* the nature of the circumstances of this case may require and to your honor shall seem meet.

C. B. COMBE,
Independent Executor of the Last Will and Testament of Stephen Powers, Deceased.
C. B. COMBE, *For Himself.*
FREDERICK J. COMBE,
243 By his solicitor, W. N. PARKS.
EMILE P. COMBE,
By his solicitor, W. N. PARKS.
F. B. COMBE.
JOSEPH K. COMBE.
CHARLES B. COMBE, JR.

W. N. PARKS,
Solicitor for Plaintiffs.
C. L. BATES,
Of Counsel for Plaintiffs.

THE STATE OF TEXAS, }
County of Cameron. }

On this day, to wit: the 17th day of October, A. D. 1898, before me personally appeared C. B. Combe, indeoendent executor of the last will and testament of Stephen Powers, deceased, who made solemn oath that he had read the foregoing amended bill of complaint subscribed by him, and that he was one of the plaintiffs therein and knows the contents thereof, and that the same are true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

C. B. COMBE.

Subscribed and sworn to before me on this the 17th day of October, A. D. 1898.

LOUIS KOWALSKI,
[SEAL.] *Clerk District Court, Cameron County, Texas.*

244 EXHIBIT "A" TO AMENDED BILL.

No. 1346.

THE STATE OF TEXAS, }
County of Cameron. }

In the District Court of Cameron County, Texas, to September Term, 1883.

To Hon. John C. Russell, judge of the 25th judicial district of the State of Texas, sitting and holding court in and for the county of Cameron, in said district:

Mifflin Kenedy, Richard King, Mrs. B. Cooper, surviving wife in community and sole executrix of Joseph Cooper, late of the city and parish of Orleans State of Louisiana, deceased, Mrs. Marie Dana *née* Grogan, and her husband Charles S. Dana, Benjamin O. Hicks, and Charles B. Combe, executor of the will of Stephen Powers, late of Cameron county, Texas, deceased. James G. Brown, Alexander Werbiskie, Celestin Jagou, John S. Cross, M. H. Cross, G. Follain, A. Marion, Lino Saldana, Agela Aguirre, and her husband, Abraham R. Aguirre, Mrs. Hilario G. de Cavazos, executrix of the will of Silas Cavazos, late of Cameron county, Texas, deceased, Rufegio Cavazos de Olvera, Carmen Cortina de Trevino, and her husband Felipe Trevino, complaining of Thomas Carson, administrator of the estate of Maria Josefa Cavazos, late of Cameron county, Texas, deceased, Genoveva Garza de Ramirez, Casimiro Tamayo, Felipita Tijerina, Rafael Morales, Victoriano Fernandez, Amasa Sprague and his wife Mary Ann Sprague to your honor respectfully shows.

That plaintiffs, Mifflin Kenedy and Richard King are residents of the county of Nueces in the State of Texas; that the plaintiff, Mrs. B. Cooper, is a resident of the city of New Orleans, parish of Orleans and State of Louisiana; that the plaintiffs Mrs. Marie Dana *née* Grogan, and her husband, Charles S. Dana, are residents of the city of Boston, county of Norfolk and State of Massachusetts, that the plaintiffs James G. Brown, Alexander Werbiskie, Benjamin O. Hicks, Charles B. Combe, Celestin Jagou, A. Marion, Lino Saldana, Mrs. Hilario G. de Cavazos, Mrs. Refugia Cavazos de Olvera, Mrs. Carmen Cortina de Trevino and her husband Felipe Trevino are each and all residents of the county of Cameron in the State of Texas.

245 That John S. Cross, M. H. Cross, G. Follaien, Mrs. Angela Aguirre and her husband Abraham R. Aguirre, are each and all residents of the city of Matamoras, State of Tamaulipas and Re-

public of Mexico,—and that the defendants Thomas Carson Casimiro Tamayo, Felipita Tijerina, Geneveva Garza de Ramirez, Rafael Morales and Victoriano Fernandez, are each and all residents of the county of Cameron, State of Texas. That the defendants Amasa Sprague and Mary Ann Sprague, his wife, are residents of the city of Providence, county of Providence, State of Rhode Island.

That plaintiffs and defendants are the owners in common *are the owners in common* of the entire tract or grant of land in the county of Cameron and State of Texas, commonly and generally and especially known as the "Espiritu Santo" tract or grant, originally granted by the Spanish government to Jose Salvador de la Garza, and being confirmation No. 42 for the county of Cameron, under an act of the legislature of the State of Texas, entitled "An act to relinquish the right of the State to certain lands therein named," approved February 10th, 1852,—said grant since patented by the State of Texas.

That said Espiritu Santo grant or tract is bounded on the front by the Rio Grande river, and extends back from said river to the Arroyo Colorado; which arroyo forms the back boundary line of said grant; that it is bounded on its lower boundary line by the three grants known respectively as the "San Martin," the "San Isabel" and as the "Buena Vista" and on its upper boundary line by the grants known respectively as the "San Pedro de Carricitos," and the "Concepcion de Carricitos."

That said grant of "Espiritu Santo" contains about fifty-four three-quarters (54¾) leagues of land, a little more or less as nearly as can be now ascertained.

That while heretofore, no legal or binding partition or division survey whatever of said tract was or has ever been made, still for convenience of the different holders and owners of said tract, and to prevent as far as might be, continual conflicting possessions and claims of right and for the more advantageous and quiet
246 use and occupation of said tract, it has been generally understood that as far as might be done, consistently with the rights and interests of all concerned, said whole tract would be generally subdivided into three grand subdivisions of one-third each of said whole grant, each to have equal frontage upon the Rio Grande river, and to extend back between parallel lines as near as might be to the Arroyo Colorado for quantity, and that each of said three grand subdivisions named be again divided in the same manner, this subdividing the said whole grant into six (6) equal parts, equal as far as may be in river frontage and rear and quantity.

1. That commencing from the lower side of said tract, the first one-sixth of said grant as generally understood, is held by the said James G. Brown, to the extent of the lower half of the said sixth, and he is the owner of said proportion of said whole tract, less one thousand acres held and owned by the said Casimiro Tamayo, to the extent of seven hundred acres—and of the said George Brulay,

to the extent of three hundred acres, occupying the river front of said one thousand acres aforesaid, Brulay and Tamayo,—and that the upper half of said lower one-sixth of said whole grant is held jointly by the said King, Kenedy and Cooper, and they are the owners of that proportion of said whole tract.

2. That the next one-sixth of said whole grant, as generally understood, is held jointly by the said King, Kenedy and Cooper, Brown and Werbiskie, in the proportion of one-half to the said King, Kenedy and Cooper, and one-fourth of said sixth each to the said Brown and Werbiskie respectively, and the said King, Kenedy and Cooper, Brown and Werbiskie, are the owners in the said whole tract of said respective proportions, less six hundred and forty acres known as the "Esperanza" ranch, which is held and owned by the said plaintiff Celestin Jagou, and which said six hundred and forty acres in quantity or moneyed value is to be adjusted as shall be right and just in the partititon in proportion to the amounts received by the respective persons benefitted by the purchase money received for said "Esperanza" tract.

247 3 and 4. That, continuing the same order, this third and fourth sixth of said whole grant, or tract, to-wit: one-third of said whole grant, is generally understood held by the said Thomas Carson, administrator of Maria Josefa Cavazos, deceased, and by B. O. Hicks and Charles B. Combe, executor of Stephen Powers, deceased, and by the said Mrs. Marie Dana and her husband Charles S. Dana, and by the said John S. Cross and M. H. Cross, and by the said Lino Saldana, in the proportion of the lower ten (10) leagues of said two-sixths jointly in one body, to the said Marie Dana and Charles B. Dana, and said Benjamin O. Hicks and Charles B. Combe, executors, and the remainder of the said two-sixths to the said Thomas Carson, administrator etc., less about six hundred acres to the said John S. Cross and M. H. Cross, to be laid off at and around their present ranch of "Agua Negra," and about three hundred and seventy acres to the said Lino Saldana, to be laid off around his present new ranch site. And the said respective parties are the owners respectively of the said proportions of the said whole grant.

5. That continuing in the same order, the six sixth of said whole tract is, as generally understood, held by the said Marie Dana and her husband Charles S. Dana, and the said Benjamin O. Hicks and Charles B. Combe, executors, etc., and the said A. Marion and G. Follain, and the said Alexander Werbiskie, and the said Mrs. Angela Aguirre, and her husband Abraham Aguirre, and the said Victoriano Fernandez, and the said Felipita Tijerina, and the said Mary Ann Aprague and her husband Amasa Sprague, and the said Rafael Morales, in the proportion of one-half league and about two hundred and fifty acres additional to the said Hicks and Combe executors, and one-half league to the said Mrs. Mary Ann Sprague and Amasa Sprague, and about two thousand acres more or less jointly, to the said A. Marion and G. Follain, and the said Marie Dana and her husband Charles S. Dana, two-sevenths (2/7)

of said sixth part of said whole grant, first deducting from said sixth about five thousand five hundred acres. And the said Mrs. Dana and husband two hundred and fifty acres additional. And the said Felipita Tijerina one-seventh (1/7) of said sixth of said whole grant, first deducting from said sixth
248 about five thousand and five hundred acres. And the said Alexander Werbiskie three sevenths (3/7) of said sixth of said whole grant, first deducting about five thousand five hundred acres and the river front labor of Dana Carmen Flores. In addition to the said Werbiskie. And to the said Victoriano Fernandes, about one-half league more or less. And to the said Mrs. Angela Aguirre, and Abram Aguirre, her husband, about three hundred acres of river front labor, known as "The Prietas" ranch, and the said Rafael Morales the small labor now occupied by him. And the said respective parties are the owners respectively of the said proportion of said whole grant.

6. That continuing in the same order, the last remaining and upper sixth of said whole grant is as generally understood, is held by the said James G. Brown and the said Hilaria G. de Cavazos, executrix, etc., and the said Mrs. Refugia Cavazos de Olvera, and the said Mrs. Carmen Cortina de Trevino and her husband Felipe Trevino, in the proportion of one-fourth of said sixth of said whole grant, and in additional her "protero" to the said Mrs. Hilaria G. de Cavazos, executrix, first deducting from said sixth one league. And the said Mrs. Refugia Cavazos de Olvera one-fourth of said sixth, deducting therefrom two leagues of land. And the said Mrs. Carmen Cortina de Trevino and Felipe Trevino her husband, one-fourth of said sixth, first deducting one league. And the said James G. Brown one-fourth of said sixth, first deducting one league and in addition thereto two leagues, one of which as set out and bounded in their deed from the former heirs and owners of this proportion of the whole grant is known as the "Allen & Hale" league. And the other league to front on the Arroyo Colorado and extends back for quantity, was purchased by the said Brown from the said Mrs. Refugia Cavazos de Olvera, and the said respective parties are the owners of said proportions of said whole grant.

Plaintiffs further allege that at different times and continuously up to the present, the different owners in common of said
249 whole grant, parties plaintiff and defendant hereto, have collected rents and tolls of "monte" for the privilege of cutting wood upon the lands involved herein, and sold large quantities of wood the growth of said land, and other and various fruits and revenues of said lands to a large amount, and that the amounts so collected have never been in any manner divided, equalized or adjusted, or the amounts in excess of the due proportion of some of said owners so collected and received by them have in manner been paid to the others, co-owners of said tract, to whom they were justly due as proceeds of their proportion of said lands.

The premises considered, plaintiffs pray that all the parties de-

fendant hereto may be duly cited according to law to answer this petition, at the next regular term of your honor's court; that upon a hearing hereof said lands be adjudged subject to partition as set out and prayed herein, and that each and all of the parties hereto plaintiffs and defendants account fully for all the rents, profits, issues and generally for any and all moneys received by them in any manner accruing or arising from the lands in question herein. That the said lands in question herein be partitioned and set apart to each of the owners thereof in severalty by dividing said whole tract into three grand subdivisions each to comprise one-third of said whole tract with equal front on the Rio Grande river and extending back between parallel lines as nearly as practicable, to the Arroyo Colorado for quantity.

That the upper and lower third so set apart be again subdivided in the same manner as to form equal sixths of said whole grant or tract, and that from the lower side of the central third of said whole tract or grant be taken in the same manner the ten leagues belonging jointly to the said Mrs. Marie Dana and her husband Charles Dana, and Benjamin O. Hicks and Charles B. Combe, executors of the estate of Stephen Powers, deceased. And that no further or more additional division or partition be now made of said whole tract or grant; that the said moneys so collected by the different parties hereto arising from said land be divided among all of the respective parties hereto as justice and equity may require, and that in so far as any of said parties may be found indebted such sum so due by them may be decreed to be a special lien and charge upon the portion of land belonging to the said party so indebted:

That J. J. Cocke, county surveyor of Cameron county, be appointed by the court to do all such surveying and make all such measuring and to have cut and fixed all such lines, as may be necessary in the premises; that writs of partition may issue as provided by law, and that three disinterested persons may be appointed commissioners to make such partition, acting in conjunction with said surveyor. That the due and just share and proportion of all costs incurred herein or incident hereto of each party hereto be adjudged a lien upon the share of said respective party, and execution issue thereof. And for all further and other general relief to which in law or equity the respective parties hereto may be found entitled, and they will ever pray, etc.

M. KENEDY,
R. KING,
MRS. B. COOPER, ET ALS., *Plaintiffs.*
By WELLS & RENTFRO, *Their Attorneys.*

(Endorsed:) No. 1346. M. Kenedy, R. King, *et als. vs.* Thomas Carson, administrator, *et als.* Plaintiff's original petition. Filed this the 8th day of June, A. D. 1883. Louis Kowalski, dist. cl'k. ct. Cam. Co. By Jules Lucadou, deputy.

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THE STATE OF TEXAS, }
County of Cameron. }

I, Louis Kowalski, clerk of the district court of Cameron county, Texas, do hereby certify the above and foregoing is a full, true and correct copy of plaintiff's original petition with all endorsements thereon filed in cause No. 1346, wherein M. Kenedy, R. King, *et als*, are plaintiffs, and Thomas Carson, administrator, *et als.*, the
251 defendants, as taken from the original on file in my office.

To certify which witness my hand and official seal this
[SEAL.] fourth day of October, A. D. 1898.

LOUIS KOWALSKI,
Clerk District Court, Cameron Co., Texas.

Spring Term, A. D. 1889, May 6th.

In District Court, 28th Judicial District of Texas.

THE STATE OF TEXAS, }
County of Cameron. }

Be it remembered that on this 6th day of May, A. D. 1889, at 10 o'clock a. m. there was begun and holden a regular term of the district court in and for the county of Cameron, in the 28th judicial district of the State of Texas, at the court house in the city of Brownsville; said day being the first of the term fixed by law for holding said term, towit: the first Monday in May, A. D. 1889.

Present: Louis Kowalski, clerk, S. A. Brito, sheriff.

The court was opened by proclamation of the sheriff pursuant to law.

The Hon. John C. Russell, judge of this court, having failed to put in his appearance, the court was thereupon adjourned until tomorrow at 10 o'clock a. m.

TUESDAY, *May 7th, A. D.* 1889—10 o'clock a. m.

The court met.

Present: Louis Kowalski, clerk, by his deputy, W. O. Reichel, S. A. Brito, sheriff, by his deputy J. Dominguez.

252 The court was opened by proclamation of the sheriff pursuant to adjournment.

The Hon. John C. Russell, judge of this court, having failed to put in his appearance, the court was therefore adjourned until tomorrow at 10 o'clock a. m.

WEDNESDAY, *May 8th*, 1889—10 o'clock a. m.

The court met.

Present: Hon. John C. Russell, judge; D. McNeill Turner, dist. att'y; Louis Kowalski, clerk; S. A. Brito, sheriff.

The court was opened by proclamation of the sheriff pursuant to adjournment.

The minutes of 6th and 7th inst. were read and approved, when the court proceeded to business as follows, to wit:

MONDAY, *May 27th, A. D.* 1889—9 o'clock a. m.

The court met.

Present: As before.

The court resumed business as follows, to-wit:

M. KENEDY, R. KING, ET ALS.
vs.
THOMAS CARSON, Administrator of Maria Josefa Cavazos, *et als.*
No. 1346. Partition of the "Espiritu Santo" Grant.

And now on this day this cause came on to be heard in its regular order upon the docket and thereupon came to be heard the final report of the commissioners of partition, herein filed in this cause on the twenty-eighth (28th) day of December, A. D. 1888,
253 and supplemental thereto and it appearing to the satisfaction of the court that said report is just, true and correct, and that said partition as therein set out is fair, and impartial and in all things in accordance with law and the orders and decrees of this court, and that the rights and ownership of the respective owners of said land *is* in all things correctly partitioned and set apart to them in said report, and there being no objection thereto, it is now therefore, in consideration of the premises by the court now hereby ordered, adjudged and decreed that the said final report and supplement thereto of said commissioners of partition be and it now hereby is in all things approved and confirmed and made final.

Share No. 7.—And it is further ordered, considered and adjudged that the next succeeding portion or share of said land, being share No. 7 of said report of partition of said tract, be and it hereby now is assigned, allotted and set apart in severalty to Mrs. Annette P. Hicks, Mrs. Kate M. Combe, Mrs. Agnes A. Brown and Frances E. Powers, (as one) as heirs of Stephen Powers, deceased, and to Mrs. Mary Ann Sprague Latham (wife of Frances W. Latham,) in one body containing two thousand and nine hundred and eighty-five (2,985) acres in the proportion of two thousand fifty-six (2,056) acres of said share to the said Mary Ann Sprague Latham and nine hundred and twenty-nine (929) acres of said heirs of Stephen Powers, deceased, bounded as follows, towit:

Beginning at the southwest corner of this tract and northwest corner of Dana and running thence with the north line of said Dana survey south eighty-two and one-half (82½) degrees east one thousand two hundred and six (1206) varas to the southeast corner a post eighty-nine (89) varas north of Jaun Alvarez labor. Thence with the west line of Miralles and Fernandes, north seven and one-half (7½) degrees, at four hundred and eighty-five (485) varas left

A. Ureste's field, at one thousand six hundred and fifty-five (1655) varas the lagoon due east of Mamon ranch at four thousand and eighty-five (4085) varas post F. D. east of Latham's crib, and
254 at four thousand and ninety-two (4092) varas left Latham's field, at five thousand six hundred and ten (5610) varas left lagoon and entered timber at seven thousand six hundred (7600) varas lagoon and road to Rosillas, at ten thousand three hundred (10,300) varas post and road from Wells to Rosillas, at fourteen thousand eight hundred and forty-three (14,843) varas, a post on south bank of the Arroyo Colorado F. L., thence up the arroyo with its meanders south eighty-two and one-half (82½) degrees west one hundred and twenty-nine (129) varas south sixty-nine and three quarters (69¾) degrees west five hundred (500) varas south sixty-one and one-half (61½) degrees west four hundred and fifty-three (453) varas, south sixty-seven and three-quarters (67¾) west two hundred and twenty (220) varas; north eighty (80) west two hundred and ten (210) varas north seventy-seven (77) degrees, west two hundred and sixty (260) varas south fifty-two and one-quarter (52¼) degrees west one hundred and thirty (130) varas, south thirteen (13) degrees west one hundred and ninety (190) varas, south thirty-eight (38) degrees east three hundred and ninety (390) varas, south fifty-one (51) degrees east two hundred and thirty (230) varas, south twelve (12) degrees east three hundred and five (305) varas; south thirty-two and one-half (32½) degrees east two hundred and forty (240) varas; south fifty-three three-quarters (53¾) degrees east two hundred and thirty (230) varas; south thirty-four and three-quarters (34¾) degrees, east two hundred and thirty-three (233) varas, south three (3) degrees east two hundred and forty (240) varas, south twenty-three and one-half (23½) degrees west three hundred and twenty-six (326) varas, south thirty-eight and one-half (38½) west three hundred and ten (310) varas, south forty-three and one-half west four hundred (400) varas, south seventy and three quarters (70¾) west one hundred (100) varas, to a post at N. W. of Mrs. F. Tijerina tract, in a field of the Puertecitas ranch. Thence with line of said tract eighty-eight (88) degrees W) south eight (8) degrees west eleven thousand six hundred and twenty-seven (11627) varas to the place of beginning.

255 The said number seven is again subdivided into shares numbers eight and nine, as follows:

Share No. 8.—And it is further ordered, considered and adjudged that nine hundred and twenty-nine (929) acres of said share No. (7) seven (said 929) nine hundred and twenty-nine acres known as share number eight (No. 8) following, being share No. (8) of said report of partition of said tract be and it hereby now is assigned, allotted and set apart in severalty to the said Annette P. Hicks, Kate M. Combe, Agnes A. Browne and Frances E. Powers, as heirs of Stephen Powers, deceased, in one body extending from the north line of the Dana land to the Arroyo Colorado, and between the survey of Mary Ann

Sprague Latham on the east and Felipita Tijerina on the west, and bounded as follows, towit:

Beginning at the southeast corner of this tract and northwest corner of survey for Mary Ann Sprague Latham, and running thence with the north line of same south eighty-two and one-half (82½) degrees east (1152) eleven hundred and fifty two varas to the northeast corner of Sprague, a post on line of Fernandez and Miralles, from which a mesquite marked $\overline{\text{L}}$ bears south seventy-three (73) degrees west (9) nine varas, and a mesquite marked $\overline{\text{L}}$ bears north forty-eight and one-half (48½) degrees east (5) varas. Thence with Miralles and Fernandez north seven and one-half (7½) degrees east five thousand two hundred and twenty-six (5,226) varas to bank of the Arroyo Colorado, a post marked Thence up the arroyo meanders north eighty-two and one-half (82½) degrees west (129) one hundred and twenty-nine varas south sixty-nine and three-quarters (69¾) degrees west (500) varas south sixty-one and one-half (61½) degrees west (453) four hundred and fifty-three varas south sixty-seven and three-quarters (67¾) degrees west two hundred and twenty (220) varas, north eighty (80) degrees west (210) two hundred and ten varas, north seventy-seven (77) degrees west (260) two hundred and sixty varas, south fifty-two and one-quarter (52¼) degrees west (130) one hundred and thirty varas south thirteen (13) degrees west (190) one hundred and ninety varas south thirty-eight (38) de-
256 grees east (390) three hundred and ninety varas, south fifty-one (51) degrees east (200) two hundred varas, south twelve (12) degrees east (305) three hundred and five varas, south thirty-two and one-half (32½) degrees east (240) two hundred and forty varas, south fifty-three and three-quarters (53¾) degrees east (230) two hundred and thirty varas, south thirty-four and three-quarters (34¾) degrees east, (233 varas) two hundred and thirty-three varas, south three (3) degrees east (240) two hundred and forty varas, south twenty-three and one-half (23½) degrees west (326) three hundred and twenty-six varas south thirty-eight and one-half (38½) degrees west (310) three hundred and ten (*310*) varas south forty-three and one-half (43½) degrees west (400) four hundred varas, south seventy (70) degrees west (96) ninety-six varas to the northwest corner of this survey and northeast corner of F. Tijerina, a post from which a marked mesquite bears northwest and one southwest. Thence with east line of Tijerina survey south eight (8) degrees west (2003) two thousand and three varas to the place of beginning.

To have and to hold the above described share or portion of said land, with all of its appurtenances whatsoever is severalty unto them the said Mrs. Annette P. Hicks, Mrs. Kate M. Combe, Mrs. Agnes A. Bronwe, and Frances E. Powers (as one) as heirs of Stephen Powers, deceased, in fee simple, and to their heirs and assigns forever.

Share No. 19.—And it is further ordered, considered and adjudged that the next succeeding share or portion of said land be share No.

nineteen*t* (19) of said report of partition of said tract be and it now hereby is allotted, assigned and set apart in severalty in one body to Mrs. Annette P. Hicks, Mrs. Kate M. Combe, Mrs. Agnes A. Browne, and Frances E. Powers (as one) as heirs of Stephen Powers, deceased, and to Mrs. Marie Grogan Dana (wife of C. S. Dana) as heir of James Grogan, deceased, in the proportion of twenty-eight thousand
257 six hundred and two (28,602) acres of said share to said Powers heirs as one, and seventeen thousand five hundred and one (17,501) acres to said Mrs. Marie Grogan Dana, the said whole share embracing the ten leagues or said forty-four thousand two hundred and eighty (44,280) acres known as the "Paredes land," owned in the proportion of five-eighths ($\frac{5}{8}$) to the said Powers heirs (as one) and three-eighths ($\frac{3}{8}$) to the said Mrs. Marie Grogan Dana; and also nine hundred and twenty-seven (927) acres of land owned by the said Powers heirs alone, and eight hundred and ninety-six (896) acres owned by the said Mrs. Dana alone, the said whole share embracing forty-six thousand one hundred and three (46,103) acres of land, being the lower part of the middle one-third ($\frac{1}{3}$) of said Espiritu Santo tract, and extends from the Rio Grande river on the south to the Arroyo Colorado on the north, not to embrace, however, within its limits, any part of the Fort Brown military reservation, as is hereinafter in this decree more particularly provided for the said whole share bounded as follows: Beginning at post in the said Fort Brown reservation, nearly opposite and a little below the lower line of the Matamoros fortification, being the S. E. corner of the next division above made for Cavazos *et al.* and the south-west corner of this survey and running thence down the Rio Grande with its meanders north fifty-six and one-half (56½) degrees east two hundred and forty (240) varas north fifteen and one-quarter (15¼) degrees east one thousand two hundred and fifty-three varas north thirty-three and one-half (33½) degrees east five hundred and thirty-four (534) varas; south sixty-seven (67) degrees east nine hundred & seventy-four (974) varas south twenty-eight & one-half (28½) degrees east three hundred & seventy-two (372) varas south forty-two and one-half (42½) degrees west one thousand two hundred and forty-five (1245) varas; south four & one-half degrees west
270 varas south 77¾° E. one hundred and forty (140) varas; north fifty-seven (57) degrees east one thousand three hundred (1300) varas north twenty-four (24) degrees east five hundred and sixty (560) varas; north fifteen (15) degrees west five hundred and ninety-four (594) varas; north seven and one-half (7½) east four hundred and seventeen (417) varas; north
258 twenty-eight (28) degrees east two hundred and forty (240) varas; north sixty-seven (67) degrees east one hundred (100) varas; south seventy-three and one-quarter (73¼) degrees east six hundred and thirty (630) varas; south eighteen and one-quarter (18¼) degrees east five hundred and eighty-five (585) varas, south seven (7) degrees west three hundred and forty-three (343) varas; south twenty-seven and one-quarter (27¼) degrees west one thousand

and forty (1040) varas; south eleven (11) degrees west four hundred and seventy-seven (477) varas; south twenty-four (24) degrees, west six hundred and ninety-five (695) varas; south two and one-half (2½) degrees west six hundred and twenty (620) varas; south thirty-three (33) degrees east five hundred and fifty (550) varas; south eighty-three (83) degrees east five hundred and eighty (580) varas north sixteen and one-half (16½) degrees east three hundred and forty-five (345) varas; north thirty-six (36) degrees west eight hundred (800) varas; north six hundred and fifty (650) varas; north eleven (11) degrees; west one hundred and fourteen (114) varas; south seventy-eight (78) degrees east one thousand one hundred and forty-eight (1148) varas; north eleven (11) degrees east one hundred and seventy (170) varas; north thirty-four (34) degrees west seven hundred and thirty (730) varas; north thirty-nine and one-half (39½) degrees east three hundred and four (304) varas; north seventy-five (75) — east two hundred and twenty-three (223) varas; south sixty-one and one-half (61½) degrees east three hundred and twelve (312) varas, south thirty-six and one-quarter (36¼) degrees east ninety-four (94) varas to a palo blanco marked six chops (≡) on the north bank of the river from which another palo blanco bears north thirty-six and one-quarter (36¼) degrees west ninety-four (94) varas for the southeast corner of this survey and southwest corner of the next survey below in this division. Thence for lower or eastern line of this survey north four and one-half (4½) degrees east at one hundred and thirty-two (132) varas passed east corner of large jacal in the Fresno ranch, two thousand six hundred (2600) varas post main road at two thousand eight hundred (2800) varas a post south side of resaca three thousand five hundred
259 and eight (3508) varas same resaca a palo blanco west at four thousand six hundred and twenty (4,620) varas same resaca at (5,410) five thousand four hundred and ten varas, road to Brazos, at (6,186) six thousand one hundred and eighty-six varas Rio Grande Railroad track at (9800) nine thousand eight hundred varas post north side of Jackass prairie, at (11,560) eleven thousand five hundred and sixty varas passed resaca del Rancho Viejo at (13,040) thirteen thousand and forty varas a post entered Palo Alto prairie, at (14,600) fourteen thousand six hundred varas road Tomque to Pt. Isabel, at (16,300) sixteen thousand three hundred varas a post in pital at (19,120) nineteen thousand one hundred and twenty varas a post at (22,000) twenty-two thousand varas a post at (25,000) twenty-five thousand varas at post entered timber at (26,381) twenty-six thousand three hundred and eighty-one varas a road east to St. Antonito ranch at (27,876) twenty-seven thousand eight hundred and seventy-six varas a road northwest to Soldados ranch, at (29,890) twenty-nine thousand eight hundred and ninety varas bank of resaca de los Cuates, at (33,270) thirty-three thousand two hundred and seventy varas post enter prairie, at (34,482) thirty-four thousand four hundred and eighty-two varas wire fence and passed pond at (36,630) thirty-six thousand six hundred and thirty varas a resaca, at (37,344) thirty-seven thousand three hundred and forty-four varas the Elizon-

dena ranch bears north fifty and one-half (50½) degrees west (220) two hundred and twenty varas at thirty-eight thousand two hundred and ninety (38,290) varas road northwest to Tina at (41,030) forty-one thousand and thirty varas a post road is to Ormigos ranch at (42,860) forty-two thousand eight hundred and sixty varas to a post road from Ormigos to Cibolo at (46,400) forty-six thousand four hundred varas a post at main road to Taremas ford, at (46,820) forty-six thousand eight hundred and twenty varas entered prairie at (48,900) forty-eight thousand nine hundred varas a post and Miradores ranch bears north seventy (70) degrees west about three-quarters (¾) of a mile at (51,500) fifty-one thousand five hundred varas to a post marked M / A, at (55,130) fifty-five thousand one hundred and thirty varas a post marked A, at (57,970) fifty-seven thousand
260 nine hundred and seventy varas a post m'k'd M, at (60,600) sixty thousand six hundred varas a salt lagoon, at (61,540) sixty-one thousand five hundred and forty varas the east end of a tule pond, at (62,553) sixty-two thousand five hundred and fifty-three varas a post m'k'd A among pitos, at a road, at (63,561) sixty-three thousand five hundred and sixty-one varas a post, at (63,670) sixty-three thousand six hundred and seventy varas a post m'k'd A on the south bank of the Arroyo Colorado, northeast corner of this survey. Thence up the Arroyo Colorado with its meanders, south forty-seven and one-half (47½) degrees west (1,100) one thousand one hundred varas, south eighty-three and one-half (83½) degrees west (1000) one thousand varas south twenty-eight and one-half (28½) degrees west four hundred and sixty (460) varas, south two and one-quarter (2¼) degrees west (900) nine hundred varas, south fifteen degrees (15) west (2,356) two thousand three hundred and fifty-six varas, south forty and three quarters (40¾) degrees west (2,138) two thousand one hundred and thirty-eight varas. North seventy-eight and one-half (78½) degrees west (290) two hundred and ninety varas north eighty-six (86) degrees west three hundred and fifty-two (352) varas to a post for the northwest corner of this survey and the northeast corner of the next survey above in this division made for Cavazos *et al.*, thence with the line of said adjoining survey south five (5) degrees west (58069) fifty-eight thousand and sixty nine varas, to the place of beginning.

To have and to hold the above described share or portion of said land with all of its appurtenances whatsoever in severalty unto them the said Mrs. Annette P. Hicks, Mrs. Kate M. Combe, Mrs. Agnes A. Browne and Miss Frances E. Powers, as heirs of the said Stephen Powers, deceased, and Mrs. Marie Grogan Dana, as heir of James Grogan, deceased, in fee simple and to their heirs and assigns for-ver.

And it is further considered, ordered and adjudged that this judgment and decree do forever stand forth and serve in all
261 things as a conveyance and title in severalty to each of the said respective parties hereto of the several and respective shares and portions of the said premises, hereinbefore adjudged to them respectively, as against the other parties hereto, their heirs,

executors, administrators and assigns as fully and effectually in the law as the deed of said parties could rest the same.

And it is further considered and decreed and expressly provided that nothing in this decree shall be construed as in any way affecting the Government or Fort Brown reservation adjoining the city of Brownsville, containing three hundred and fifty-eight and one-half acres occupied by the United States as a military post, the title of which has been vested in Thomas Carson, administrator of Maria Josefa Cavazos, and in James Stillman by decree of the circuit court of the United States for the western district of Texas at Brownsville, rendered on the 24th day of July, A. D. 1887, in cause No. 248, on the docket of said court entitled Heirs of Miguel Salinas *vs.* W. L. Kellogg, *et al.*, which said decree is hereby recognized and acquiesced in. Nor shall any line or lines nor the survey itself which has been made under the orders of this court in this cause, be taken or considered as of any force or effect so far as they may have any bearing upon the said reservation, or of the right of the joint owners thereto, nor shall they be of any legal, moral or persuasive force so far as said reservation is concerned. No part of the record of this cause, whether pleadings, surveys, testimony, orders, judgments or decrees, shall be used as evidence at any time for or against the said joint owners in ascertaining and determining their respective portions of said reservation. In other words, as the said Fort Brown reservation has been set apart by metes and bounds and segregated from the Espiritu Santo grant or survey, by the decree of the said circuit court of the United States aforesaid. It is considered and so adjudged that the said reservation has been taken from the jurisdiction of this court in this cause, and this court now disclaims all jurisdiction over the said reservation in this cause, and decrees that
262 nothing in this judgment nor in any former judgment, order, surveys or other proceedings in this suit shall in the slightest degree affect the said reservation or the rights of the joint owners therein, or if the joint owners should at any time find it necessary to resort to proceedings, whether judicial, by arbitration or otherwise, for the purpose of ascertaining their respective portions of or interests in the said reservation, they shall be in nowise bound or affected by the survey or adjudications in this cause, but may have new surveys made or take any other course they may choose to adopt as fully and completely to all intents and purposes as though this suit had never been instituted, or any surveys made or proceedings had herein.

And it is further expressly ordered, considered and adjudged that the line of the Paredes ten leagues shall and does stop at the outer line of said military reservation of Fort Brown and does not and shall not at all enter into, pass through or include any part of said reservation, and that field notes of said Paredes land as hereinbefore set out shall be and are of no force and effect so far as any part of said military reservation is concerned.

And it is further considered, adjudged and decreed, that the said

Alexander Werbiskie, one of the plaintiffs herein, pay to Mrs. Marie Grogan Dana the sum of two hundred and fifty dollars ($250.00) in United States currency, and to Mrs. Annette P. Hicks the sum of sixty-two dollars and fifty cents ($62.50) and to Mrs. Agnes A. Browne the sum of sixty two dollars and fifty cents ($62.50), and to Miss Frances E. Powers, the sum of sixty-two dollars and fifty cents ($62.50), and Dr. Charles B. Combe, executor of Kate M. Combe, deceased, the sum of sixty-two dollars and fifty cents ($62.50), all in United States currency, for each and all of which sums let execution issue in due course of law; the said sums adjudged against and found due from said Werbiskie to said parties respectively by and in note three (3) shares Nos. eight (8) ten (10) twelve (12) and fourteen (14) of the said report of partition herein in payment by said Werbiskie to said parties for four hundred acres of land unavoid-ly set apart to said Werbiskie in his share No. ten (10) twenty-one (21)
in excess, and in his share No. twelve (12) three hundred
263 and seventy-nine (379) acres in excess, which said four hundred acres of land belonged to and should have been included in the shares of Mrs. Dana and of the heirs of Stephen Powers, deceased, to-wit: said Annette P. Hicks, Kate M. Combe, Agnes A. Browne and Frances E. Powers, and the said amounts of money respectively are therefore to be paid by said Werbiskie as compensation for and in lieu thereof.

And it is further considered and adjudged that all the costs of court in this cause, and all costs of the partition herein as shown by the report of partition and supplement thereto in this cause, aggregating the sum of twelve thousand five hundred and fifty-four dollars and four cents ($12,554.04) in United States currency, shall be paid as follows:

Eighth. Mrs. Annette P. Hicks, Mrs. Agnes A. Browne, Miss Frances E. Powers and Mrs. Kate M. Combe, (by Charles B. Combe, her executor) shall pay the sum of one thousand and one hundred and ninety-five dollars and fourteen cents ($1,195.14).

And it is further ordered, adjudged and decreed that the said respective amounts herein adjudged against the respective parties, shall be a special lien and charge upon the land of each and every one of the respective shares to which it belongs, until paid.

No further business appearing, the court now took a recess until tomorrow morning at ten o'clock a. m.

THE STATE OF TEXAS, }
County of Cameron. }

I Louis Kowalski, clerk of the district court, Cameron county, Texas, do hereby certify; that the above and foregoing is a full, true and correct copy of shares seven, eight and nineteen apportioned off to the heirs of Stephen Powers, deceased as per decreeof partition of the "Espiritu Santo" grant, in the district court of Cameron county, Texas, in cause No. 1346, wherein M. Kenedy,

R. King, *et als.*, are plaintiff-, and Thomas Carson, admin-
264 istrator of Maria Josefa Cavazos, *et als.* the defendants rendered on the 27th day of May, A. D. 1889, the same being a regular day of this term of court as the same appears of record in Book F, pages 379/424.

To certify which witness my hand and official seal at of-
[SEAL.] fice in the city of Brownsville, Texas, this fourth day of October, A. D. 1898.

LOUIS KOWALSKI,
Clerk District Court, Cameron County, Tex.

(EXHIBIT B TO AMENDED BILL.)

GALVESTON, TEXAS, *Oct.* 8, 1889.

Dr. C. B. Combe, Brownsville, Texas.

DEAR SIR: Responding to your verbal request for my opinion as to the powers possessed by the surviving co-executor, I have the honor to state.

"That such executors, however, numerous, are regarded as one person, and that on the death of one of them all the powers conferred on the whole number survives to the survivors or survivor of them unless some other contingency is made in the will.

In England a different doctrine prevailed up to the 16th century, when the common law was superseded by statute in the reign of Henry VIII, excepting executors from the rule of the common law which prohibited one of several trustees from executing a power conferred on several.

This led to some confusion of ideas as to the exact power of the surviving executor, but in this, if not in all the States, this exception of the executor from the rule applicable to the surviving trustee in other cases has been adopted, and is the law.

Johnson *vs.* Bowden, 43 T. 670.

Blanton *v.* Mayes, 58 T. 420.

265 Anderson *v.* Stockdale, 62 T. 54; 2 Williams on Executors, p. 818–813.

Your appointment as executor is in these words: "I do further appoint Dr. C. B. Combe and B. O. Hicks as executors of this my last will and testament, with full powers to administer and liquidate the same."

It further provides that no action shall be taken in the probate court except the probate of the will and the filing of an inventory of the estate and dispenses the executors from giving bond.

Under these circumstances it is my opinion that all the power conferred on you and B. O. Hicks, as executors of the will of Stephen Powers, devolved on you on the death of Mr. Hicks.

The control and management of the estate by the executors or the survivor of them, continues for the period limited by the will, or in

the absence of such limitation until the last act necessary to carry into execution the wishes of the testator as expressed in the will has been performed and the estate delivered into the hands of the persons entitled to receive it.

Yours truly,

F. E. McMANUS.

We have carefully examined the foregoing opinion and fully concur in the views and conclusions arrived at by Mr. McManus.

The doctrine laid down by him has been ag-in reiterated in the late case of Roberts *v.* Cannellee, 71 T. R. 11.

WILLIE, MOTT & BALLINGER,
By A. H. WILLIE.

Endorsed: U. S. circuit court, western district Texas, Brownsville division. C. B. Combe, ex'r *vs.* James Stillman, *et al.* No. 21 In equity. Amended bill. Filed at San Antonio, Texas, by order of court this 29th day of October, 1898. D. H. Hart, clerk U. S. circuit court, by A. Grosenbacher, deputy.

266 NOTE.—Exhibit E, next in order to the foregoing document, is not copied herein because the same consists of part of the record in No. 248, and is hereinafter copied in full.

267 & 268 In the U. S. Circuit Court in and for the Western District of Texas, at Brownsville Sitting.

C. B. COMBE, Executor, etc., *vs.* JAMES STILLMAN ET AL. } In Equity. No. 21.

The plea of defendant Thomas Carson, individually and as administrator of the estate of Maria Josefa Cavazos, dec'd, to the bill of complaint of C. B. Combe, suing as the executor of Stephen Powers, dec'd.

Said defendant by protestation, not waiving his plea to the jurisdiction or any other pleas hereto filed questioning the jurisdiction of this court but specially insisting on same, and appearing solely for the purpose of presenting this plea, and not confessing or acknowledging all or any of the matters and things in complainants' bill *be*ntioned to be true in such manner and form as the same are therein and thereby set forth and alleged doth plead thereto, and for plea says that the court ought not to take cognizance of, or hear, or sustain the aforesaid action because complainant at the commencement of said suit was not, nor has he since been, nor is he now the executor of the estate of Stephen Powers deceased as in his bill of complaint alleged, nor was he at the commencement of said suit nor thence hither*un*to, nor now, authorized to sue herein as ex-

ecutor nor had he at the commencement of said suit; nor thence hitherunto, nor has he now any interest as such executor in the subject matter of said suit whatever, but that in truth and in fact he had long before the commencement of said suit ceased to be such executor, closed his trust as such and said executorship was finally closed and settled, and said complainant therefore is without capacity to sue herein as such executor and was without such capacity at the commencement of said suit and thence hitherunto for this:

He says that the complainant sues herein as the executor of *of* the estate of Stephen Powers, dec'd, and alleges that said Stephen Powers at his death owned a part of the land described in complainant's bill as the Fort Brown reservation and that by reason of such ownership said estate is entitled to a portion of the *the* fund
269 alleged to have been collected by this defendant as administrator as aforesaid and his co-defendant James Stillman from the United States Government in payment for said reservation and the rents arising therefrom. And defendant says that complainant's claim that said Powers so owned a part of said reservation is based upon the fact that said Powers at his death owned in common with Marie Grogan Dana a certain tract of land known as the Paredes tract described as ten sections or square leagues off of the eastern part of the middle third of the Espiritu Santo grant and it will be contented and is contended by complainant that the said reservation is in part within the boundaries of the said Paredes tract That if no part of said reservation is within the boundaries of said Paredes tract then neither said Powers or said Dana ever owned any part of said reservation and consequently never had any right to any part or portion of said fund referred to in complainant's bill.

And defendant says that said Powers on the 29th day of July, 1869, executed his certain will a copy of which is attached to complainant's bill herein and defendants beg to refer to same and make same part of this plea. That after providing therein for certain special money legacies, said Powers devised and bequ-athed thereby all of his property of whatever description, in equal shares and portions, to his two daughters, Agnes Anastacia and Frances Euphemia Powers, and his two step-daughters, Kate Maria Impey, wife of Dr. C. B. Combe, and Annette Pauline Impey, wife of B. O. Hicks, and that he further provided by said will as follows.

"And I do further order and appoint that Kate Maria Combe, in connection with her said husband, be testimentiary guardian of the personal estate of my daughter Agnes Anastacia and I also further order and appoint that Annette Pauline Hicks and her husband B. O. Hicks, be testamentary guardians of the personal estate of my daughter, Frances Euphemia; provided, that if either of the said Kate Maria or Annette Pauline should die before the said Agnes Anastacia or Frances Euphemia should become of age, then and in that case the survivor of the two former, in connection with their respective husbands, shall be the guardians of the persons
270 and estate of the two latter. And further provided that in case of the death of both of the said Kate Maria a-d Annette

Pauline before my two minor children arrive of age, and then and in that case I appoint my late wife's sisters and the survivors of them to be such guardians as above provided.—"And I also direct that any and all lands of which I may die seized be kept together until my youngest daughter arrives of age; and I further order and appoint that all my just debts be paid. And I do further appoint Dr. C. B. Combe and B. O. Hicks executors of this my last will and testament with full powers to administer and liquidate the same."

"I do further provide and will that no action be had in the probate court in relation to my estate than the probate of this my will, and registry of the same, and the return of an inventory of my estate as provided by law, waiving in this behalf all securities that would otherwise be required of them and of the testamentray guardians herein provided."

That on the 31st day of December, 1881, said Powers executed a certain codicil to said will wherein he made certain other moneyed legacies but no other changes in said will, but on the contrary specified in said codicil as follows:

"This codicil and the terms thereof not to alter or *and* in any manner change the terms of my said last will only in so much as this is intended to and does create an addition to the bequests and devises to the said Annette Pauline Impey Hicks and the said Kate Maria Impey Combe in the amount of the respective sums herein named. In all and every other respects now hereby re-affirming my said will of July, 29th, 1869, and making this codicil part thereof, and hereby expressly revoking every and all other wills and codicils whatsoever."

That on the 5th, day of February, 1882, said Powers died in Cameron county Texas, leaving said will and codicil as his last will and codicil, the same not having been changed by him in any respect. That thereafter said will and codicil were duly filed for probate on the county court of Cameron county, Texas, and on the 30th, day of March, 1882, same were by the judgement of said county court duly probated as the last will of said Powers. And to said judge-
271 ment, which is an exhibit to complainant's bill this defendant begs leave to refer and make part of this plea. That in said judgement among other things it was decreed as follows:

"It is also further ordered and adjudged that the said applicants Benjamin O. Hicks and Charles B. Combe, be and they are now hereby declared to be the executors of said will and estate, and that no further action is required of them, except the filing of an inventory and appraisement and list of claims, which has been *delu* approved and recorded in the minutes of this court, it is thereo*f*re noe here further ordered and adjudged that the same be and it now hereby is in all things approved, confirmed and adopted as the inventory and appraisement of this said estate and that no further or other inventory and appraisement be or is required to be made or filed by said executors."

That both said B. O. Hicks and said C. B. Combe on the 7th day

of April, 1882, qualified as such executors by taking the oath required by law and thereby became independent executors of said Powers under the laws of Texas, free from the control of said probate court and with power to administer said estate independent of said court.

That *of* or about the 16th day of November, 1887, said B. O. Hicks died.

That Frances E. Powers was the youngest daughter of said Stephen Powers and that she became of age on or about the 4th day of March, 1888.

That the said Paredes tract was inventoried by said executors as part of the estate of Stephen Powers dec'd and as being held by him in common with said Maria Grogan Dana.

That no partition of said tract between said Powers or anyone holding under him or representing his estate has ever been had with said Maria Grogan Dana.

And defendant says he is informed and believes and charges it to be true that all the debts of said Powers estate have long since been paid and that no necessity for further administration thereof exists. That when said youngest daughter of said Powers
272 became of age the trust of said executors under said will ceased by the terms thereof. That said administration has in fact been closed, possession of all the property left by Powers given to the devisees and legatees thereunder in accordance with the terms of said will, and all legacies duly paid and said Combe has for many years past and long before this suit was filed ceased to act as such executor or to administer said estate but on the contrary has fully partitioned same and recognized that his trust was fully and finally ended long before this suit was filed for this:—

That heretofore, to wit; on the 2d, day of October, 1891, a partition of said estate was had between all parties interested *the* therein and the interest of each party therein duly set aside. That said C. B. Combe was party to said partition both individually and as executor of said estate, all of which will more fully appear by reference to copy of said partition attached to reply of this defendant to the rule for contempt served herein on him and to which reference is now made and same is specially made a part of this plea.

That whilst said Paredes tract was not specifically mentioned in said partition, ever after same it was held and possessed by the said legatees and devisees under said will of said Powers in common with said Grogan Dana. That thereafter said complainant ceased to administer on said estate of said Powers and ceased to exercise any dominion or power over same as executor. That on the 17th, day of August, 1887, said Kate M. Combe executed her last will a copy of which is hereto attached and made a part hereof. That by said will, after making certain monied, legacies, she devised and bequeathed all of her property to her sons Fred., Charles B., Frank B., Joseph K., and Emile P. Combe, and appointed her husband C. B. Combe her independent executor and also the guardian of said

children. That on or about the 10th day of September, 1887 sai
Kate M. Combe died and said will was duly probated and said C. I
Combe duly qualified as executor of the estate of said testator an
as guardian of her said sons. That he duly returned an inventor
of the property of said estate, a copy of which is hereto attache
and made a part hereof, and therein specified as part of th
273 said estate of his testator an undivided one fourth interest i
the said Paredes tract of six and one-quarter leagues of lan
and that said inventory was verified by the affidavit of said C. I
Combe, to the effect that it was full inventory and description of a
the real, personal and mixed property belonging to the estate so fa
as said affiant- had been able to ascertain.

That thereafter said C. B. Combe had a full and complete writte
partition between himself and the said sons of his said wife of all th
property devised and bequeathed to them under her said will,
copy of which instrument *od* hereto attached and made a part thereo
and which said partition bears date April, 6th, 1896.

That in said partition it was recited among other things as follows

That whereas, Kate M. Combe, late of Cameron county, State o
Texas, deceased, died in the said county of Cameron, leaving a las
will and testament since duly probated in the said county of Cam
eron by the terms of which her five (5) sons and only children towit
Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Josep
K. Combe, and Emile P. Combe, were named and made the sol
heirs, devisees and legatees of all her estate, real, personal and mixed
and whereas by the terms of said will her surviving husband i
community, Charles B. Combe, M. D. was named and was thereafte
duly appointed and qualified as the sole independent executor o
the said will and whereas the estate of the said Kate M. Combe con
sists of:

First. Her separate estate derived through the will of her ste
father Stephen Powers, deceased, which said part and share of th
real estate of the said Stephen Powers, as partitioned and set apar
in severalty to the said Kate M. Combe, (during her life time) an
to her said sons and heirs (after her death) is as follows, to wit:

3rd. One undivided fourth (¼) of twenty eight thousand, six hun
drered and two (28602) being seventy one hundred and fifty an
half (7150½) acres. The said 28602 acres being an undivided par
of 46103 acres which is all of share No. 19 being known as and calle
the "Paredes tract."

274 That in said partition frequent reference is made to land
devised and bequesthed to said Kate M. Combe under the sai
will of said Powers as having been theretofore partitioned off to he

That in said partition the said "Paredes tract" was specifically
set apart to the sons of said Kate M. Combe to be held in com
mon by them with the other owners in common thereof, viz: th
legatees and devisees under the will of said Powers and the sa
Maria Grogan Dana. And it was specifically recited in said part
tion among other things as follows:

"And whereas each and all of the said parties" (meaning the parties to said partition) "have in all things agreed and by these presents do agree to a full settlement and partition of all the estate, real personal, and mixed of the said Kate M. Combe, and also of the community property and estate of her, the said Kate M. Combe, and her husband the said Charles B. Combe, M.D. and a full and final settlement of all matters of account between them in any wise growing out of, connected with, or touching said estates and property. Now, therefore, in consideration of the premises, we the undersigned, Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe, Emile P. Combe, and Charles B. Combe, M. D., of the said county and State do agree and each with the other does hereby agree upon the following settlement and partition of the said separate and community estates of of the said Kate M. Combe, deceased, towit; "* * * Seventy one hundred and fifty and one half (7150½) acres of land out of and forming a part of that part of the Espiritu Santo grant known as the 'Paredes tract' and being all the land undivided belonging to the estate of the said Kate M. Combe in and out of share No. 19 in and by the terms of the decree of partition of the said Espiritu Santu grant, is to be henceforth owned and held (in common with the other owners of share No. 19) by them in common, the said Frederick J. Combe, Charles B. Combe, Jr., Joseph K. Combe, and Emile P. Combe, in the proportion of one equal fifth, being fourteen hundred and thirty and one tenth acres to and as the share of each on them therein."

275 That said partition contained likewise the following stipulations towit:

"That all matters of accounts for any monies received or expended by either of the parties since the death of said Kate M. Combe, in anywise growing out of or connected with her separate estate of the community estate of herself and her said husband, have been and are now hereby declared to be satisfactorily balanced adjusted and closed by and between the respective parties hereto.

That the final decree of partition in cause No. 1346, M. Kenedy R. King, *et al.*, *vs.* Thomas Carson, administrator estate Maria Josefa Cavazos *et al.*,—cause No. 1348 "B. O. Hicks, executor etc. *et al. vs.* Anastacio Trevino *et al.*" and cause No. 1606 "Charles B. Combe, *et al. vs.* Annette P. Hicks, *et al.*" hereinbefore mentioned are now especially made part hereof for greater certainty, etc.

That said Charles B. Combe, M. D. in so far as the other parties hereto are concerned, is now hereby forever discharged as executor of the will of Kate M. Combe, deceased, and in all things released and discharged from all liability to either of the other parties hereto, by reason of said executorship.

That henceforth and forever each of the respective parties hereto shall own, have and hold in severalty in fee simple, all of the property, real and personal, herein and hereby partitioned, allotted and set apart to them respectively, free from any and all interest, owner-

ship, right, title or claim thereto of each of the other parties hereto respectively; and that these presents shall in all things have the force and effect of a conveyance, in the usual form with the full warranty of title from each of the respective parties hereto to each of the other parties hereto respectively, as to all of the property, real and personal herein and hereby partitioned, allotted and set apart to each of them respectively."

That said instrument of partition was duly signed by the said C. B. Combe and each of the other parties thereto.

That thereafter, towit: on the 15th day of June, 1896, said C. B. Combe filed his certain petition in the county court of Cam-
276 eron county, wherein he recited said partition and averred that he had in all things settled with his said wards and prayed for his discharge. That upon hearing of said petition judgement was duly entered by said county court closing said guardianship and discharging said guardian. And it was specially decreed therein as follows:

"And also came on to be heard the petition of the guardian to be discharged and it appearing to the court that all of the debts of the said estate known to exist have been paid off and assumed by the said wards and the co-heirs of said Kate M. Combe deceased, *o* to the entire satisfaction of the creditors of said wards estate *ad* and there is no further necessity for guardianship herein.

It is ordered adjudged and decreed by the court that upon payment of all costs of court incurred in this behalf the guardianship herein be closed and cause dropped from the docket and the guardian released from further liability herein."

And defendant attaches cop-es of said two instruments hereto and makes same parts hereof.

And defendant says that reco*h*nizing that the said Powers' admonistration has long since been finally closed and that the trust of said executors has been finally carried out, the various devisees and legatees under said will of said Powers have received the properties coming to them thereunder and particularly said Paredes tract of land and have caused same to be assessed for taxes against them and said Maria Grogan Dana, so the defendant is informed and believes and charges to be true, ever since the year 1890, and since said 1890, said Combe has not rendered said tract for taxes as executor of said Powers' estate nor has he rendered any property for taxes as such executor but has treated said executorship as fully and finally closed.

That on the 4th, day of May, 1889 said C. B. Combe, as executor of the estate of Kate B. Combe deceased, Maria Grogan Dana, joined by her husband Charles S. Dana, Agnes A. Browne, formerly Powers, joined by her husband James A. Browne, Annette P. Hicks and Francis E. Powers all executed a certain power of attor-
277 ney to George Connor, wherein they authorized and empowered him to take possession of said Paredes tract and rent same and collect the rents therefrom and do other matters and things

connected with the ownership of said property, which said power was duly accepted by said Connor and he proceeded to act and did act thereunder, a copy of said instrument is attached and made a part of this plea.

That it was recited in said power among other things, as follows: "That whereas, all that certain ten (10) leagues of land comprising forty four thousand, two hundred and eighty (44,280), acres commonly and generally and especially known and called the "Paredes lands" out of and forming part of that larger grant to J. S. de la Garza, called and known as the Espiritu Santu grant is held and owned in common by Charles S. Dana and Marie Grogan Dana his wife of Boston in the State of Massachusetts, and the heirs and devisees of Stephen Powers, late of Cameron county Texas, deceased, said Powers' heirs and devisees being Mrs. Agnes A. Browne, Mrs. Annette P. Hicks, Miss Francis E. Powers and Mrs. Kate M. Combe, now deceased, the said Powers heirs owning five eighths (5/8) undivided of said Paredes ten leagues and the said Dana and wife owning three (3/8) eighths undivided thereof. And whereas said owners of said Paredes lands are desirous of and have agreed to employ George Connor of the said co-nty of Cameron Texas, to procure tenants for said lands and lease the same to them, and to collect the rents from all occupants and tenants upon said lands and to personally watch over and protect said lands from all trespass, waste and unlawful occupancy, * * *

Now, therefore in consideration of the premises we, Charles S. Dana, and Marie Grogan Dana his wife, of the city of Boston in the State of Massachusetts acting by and through James B. Wells, their duly authorized agent and attorney in fact, and Annette P. Hicks, (a widow) and Francis E. Powers, a *feme sole* and Agnes A. Browne, (*née* Powers) joined herein by James A. Browne her husband and Charles B. Combe, M. D, executor of the will of Kate B. Combe, deceased all of the said county of Cameron and State of Texas and owners of the said Paredes ten leagues of land have nomi-
278 nated, made, constituted and appointed and by these presents do nominate, make constitute and appoint the said George Connor of the county of Cameron and the State of Texas our true and lawful agent and attorney in fact for us and for each of us and in our names and each of our names places and steads for the purpose and under the conditions and compensation and for the period hereinbefore set out and enunciated and enumerated."

And deffendant further says that the agreement set up in complainant's bill and as an exhibit thereto as to the disposition to be made of the money to be collected from the United States Government for the Fort Brown reservation was signed by the said Kate M. Combe, and C. B. Combe individually by their attorneys and also by B. O. Hicks and Annette P. Hicks, individually by their attorneys and by B. O. Hicks as guardian of the estate of Francis E. Powers by his attorneys and by Agnes A. Browne formerly Powers, and her husband James A. Browne individually by their attorneys,

and that each of said parties were party to said suit of Salinas vs Kellogg.

That whilst said Combe signed said agreement as executor of said Powers your defendant was informed and believes and charges i- to be true that he had no authority under the law nor under the will of saod Powers to bind said Powers' estate by any such agreement and same did not and could not bind said estate and that it was for this reason that the said decisees and legatees were made parties to said suit and said agreement. And decendant is informed and believes and charges i- to be true that thereafter said Combe as such executor of saod Powers asserted no title to the funds to be collected under the said agreement, did not aid or assist in the collection of same, paid none of the expenses of collection o- same, and treated all claims to said fun-s as growing out of the alleged ownership of the said Paredes tract, and as the property of the said devisees and legatees under said will until the filing of this suit. And defendant says that said complainant now sues herein as such executor and the said devisees and legatees are not made parties thereto, nor are their legal representatives made parties thereto, and that
279 said Combe is without power and authority in the premises to bring or prosecute this suit as such alleged executor his trust having and said executorship having ended before the bringing of said suit; and no judgement rendered herein could or would bind the said legatees and devisees under said will or could or would bind the estate of said Powers, or could or would bind any alleged interest of the said Powers' estate or said legatees or devisees in said alleged fund, so defendant is informed and believes and charges to be true.

And this defendant pleads the foregoing facts to the whole of said bill and demands jusgement of this honorable court whether he ought to be compelled to make any answer to the said bill of complaint and prays that he be hance dismissed with his reasonable costs in this behalf most wrongfully sustained.

FRANKLYN, COBBS & McGOWN,
Solicitors and Counsel for the said Defendant.

I hereby certify that I am one of the solicitors and of counsel for the above named defendant in the foregoing cause, and that in my opinion the foregoing plea is well founded in point of law.

THO. H. FRANKLIN,
Solicitor and Counsel for said Defendant.

THE STATE OF TEXAS, }
County of Cameron. }

Thos. Carson beinf duly sworn deposes and says that he individually and as administrator of the estate of Maria Josefa Cavazos dec'd, is the defendant in the foregoing plea; that he has read the

same and knows the contents thereof and that the same is true in substance and in fact.

THOMAS CARSON.

Sworn to and subscribed before me this 31 day of August, A. D. 1898.

D. H. HART, *Clerk*,
By CHAS. F. TILGHMAN, *Deputy*.

280 THE STATE OF TEXAS, }
County of Cameron. }

Know all men by these presents, that whereas, Kate M. Combe, late of Cameron county, State of Texas, deceased, died in the said county of Cameron, Texas, leaving a last will and testament since duly probated in the said county of Cameron, by the terms of which her five (5) sons, and only children, to-wit:—Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe were named and made the sole heirs, devisees and legatees of all her estate, real, personal and mixed. And whereas, by the terms of the said will, her surviving husband in community, Charles B. Combe, M. D., was named and thereafter duly appointed and qualified as the sole independent executor of the said will; and whereas, the estate of the said Kate M. Combe, consisted of,—

First.

Her *separate* estate, derived through the will of her step-father, Stephen Powers, deceased, which said part and share of the real estate of the said Stephen Powers, as partitioned and set apart in severalty to the said Kate M. Combe, (during her lifetime) and to her said sons and heirs (after her death) is as follows, to-wit:—By the final decree of partition of all that certain grant of land, lying and being situated in the said county of Cameron, State of Texas, comprising fifty-four and one-half leagues of land, more or less, originally granted to J. S. de la Garza, and known as and called the "Espiritu Santo" grant, in the district court of said county of Cameron, in cause No. 1346, M. Kenedy, R. King, *et als. vs.* Thomas Carson, administrator, etc., Maria Josefa Cavazos, *et al.*, to the said Kate M. Combe.

1st. One undivided eighth (⅛) of four hundred and forty (440) acres of land, being fifty-five (55) acres; the said 440 acres being all of share No. 4, in and by the terms of said decree and as the "Villa Nueva" tract.

2nd. One undivided fourth (¼) of nine hundred and twenty-nine (929) acres of land, being two hundred and thirty-four and one-quarter (234¼) acres; the said 929 acres being all of share
281 No. 8, in and by the terms of said decree and known as and called the "Capateño."

3rd. One undivided fourth (¼) of twenty-eight thousand six hundred and two (28602) being seventy-one hundred and fifty and one-half (7150½) acres. The said 28602 acres being an undivided part of 46103 acres which is all of share No. 19, being known as and called the "Paredes tract."

By the final decree of partition of all that certain grant of land, lying and being situated in the said county of Cameron and State of Texas, comprising twelve (12) leagues, more or less, originally granted to Bartolome and Eugenio Fernandez and commonly and generally and especially known as and called, the "Concepcion de Carricitos" grant, or tract of —, in cause No. 1362, B. O. Hicks, executor, etc., *vs.* Anastacio Treviño, *et al.*, to the said Kate M. Combe, in common with her three (3) co-heirs and co-devisees.

1st. One undivided fourth (¼) of 5072 acres of land 1268 acres of land; the said 5072 acres being all of share No. 9, in and by the terms of said partition of decree and embracing all of private survey Nos. 433 and 433,—of said county of Cameron.

2nd. One undivided fourth (¼) of 302 acres of land, being 75.5 acres of land; the said 302 acres being all of share No. 10, in and by the said partition decree, and embracing all of private survey No. 434, in said county of Cameron.

3rd. One undivided fourth (¼) of 839 acres of front land being 209.75 acres of land; the said 839 acres being all of share No. 13, in and by the terms of said partition decree, and embracing all of private survey No. 438, of said county of Cameron, and known as the "Medrano."

4th. One undivided fourth (¼) of 22,663 acres of land, being 5665.75 acres of land; said 22,663 acres being all of share No. 24, in and by the terms of said partition decree and embracing all of private survey No. 448 and 461, of said county of Cameron.

And *hw*ereas, the said lands in the said "Concepcion de Carricitos" grant so partitioned and set apart to the said Kate M. Combe and to her three (3) co-heirs and co-devisees, of the said Stephen Powers, deceased,—were thereafter duly partitioned among the said heirs and devisees, in and by the final decree of partition, duly ren-
282 dered in the said district court of said county of Cameron, in cause No. 1606, Charles B. Combe, *et al. vs.* Annette P. Hicks, *et al.*, and in and by the terms of said decree was partitioned and set apart in common to the said Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe, as the children and sole heirs and devisees of the said Kate M. Combe, deceased, as their separate part and share, 10114 acres, being all of share No. 2, in and by the terms of said final decree of the said lands. Said lands being set apart to them in three (3) portions respectively, as follows, to-wit:—

1st. Portions Nos. (1) and (2) 839 acres of land enclosing site formerly known as the Medrano, and being all of said private survey No. 438, of said county of Cameron.

2nd. Portion No. (3) 9275 acres of land, being all of portion No. 3,

being part of private survey No. 461, of said county of Cameron, and including within its bounds the Ranches Las Burras, Realito, Huisachosa, El Nopal and El Fresnal.

And whereas, in and by the terms of said last named decree in cause No. 1606, Charles B. Combe, *et al.*, *vs.* Annette P. Hicks, *et al.*, there was also partitioned and set apart in severalty, to the said Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe, as children and sole heirs and devisees of the said Kate M. Combe.

1st. Three thousand and seventeen and one-half 3017½ acres of land situated and being in the county of Hidalgo and State of Texas, fronting upon the Rio Grande river, and extending back in a northerly direction to the rear line of the portion of which it forms a part, for quantity; the said lands being the western part of porcion No. 53, of the ancient jurisdiction of the town of Reynosa, originally granted by the Spanish government to Francisco de la Garza.

2nd. Two lots (8) and (9) in block (91), in the city of Brownsville, Cameron county, Texas, according to George Lyons' survey, map and plat of said city; said lots fronting fifty (50— feet each on Adams street, and extending one hundred and twenty (120, feet between parallel lines to an alley in the rear for quantity.

And whereas, the said Frederick J. Combe, Charles B.
283 Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe, as such children heirs and devisees of the said Kate M. Combe, also own as part of her separate estate the following real estate, to-wit:—

1st. One undivided eighth (⅛) of a certain labor of land lying and being situated in Brazos harbor, in the waters of the Laguna Madre, in the said county of Cameron and State of Texas, commonly known as and called "Clark's island," the same being in and a part of confirmation No. 11, of the said county of Cameron, under the confirmation act of the legislature of the State of Texas, of Feb. 10th, A. D., 1852, entitled,—"An act to relinquish the right of the State to certain lands therein named."

2nd. One undivided fourth (¼) being sixteen hundred and sixty and one half acres (1660½) of one and one-half leagues of land, undivided, out of and forming part of the undivided portion of that certain larger tract or grant of 71 leagues, more or less, lying and being situated in the county of Hidalgo, State of Texas, and commonly and generally known as and called the "Cardeñena" grant and as the Salt Lake grant, originally granted by the Spanish government to Juan José Balli.

3rd. Seven thousand four hundred and seventy-two and one-quarter (7472.25) acres of land, undivided, being a part of that 9 leagues of land more or less, situated and being in the said county of Hidalgo, State of Texas, commonly known as and called the "Melado" tract; the said "Melado" tract being a divided and separated part of the said "Cardeneña" or Salt Lake grant, Juan José Balli, original grantee.

Second.

Her, the said Kate M. Combe's community real estate, now h
and owned, in common by her said five children, heirs and devis
in common with their father, the said Charles B. Combe, M. D.,
the proportion of one undivided half to him and the other undivi
half to them her said heirs, children and devisees, is as follo
to-wit:—

1st. One undivided half of town lots one (1) two (2) three (3), fo
(4) five, (5) and six (6) in block 39, in the city of Brownsville, cou
of Cameron, State of Texas, fronting fifty (50) feet each on Le
street, according to George Lyons' survey, map and plat of sa
city.

2nd. Town lots five and six, in block (55) in the city of Brow
ville, fronting fifty feet on Elizabeth street, according to Geo
Lyons' survey, map and plat of said city; said lots and i
284 provements known as and called the "Combe homestead."

3rd. Two lots one (1) in block 67, in the said city of Brow
ville fronting fifty on Washington street, according to George Lyo
survey, map and plat of said city, said lot known as and called t
"Stable lot."

4th. Two lot seven (7) in block "T" in the city of Brownsvil
said lot and improvements thereon known as and called t
"Marinao Treviño property."

5th. One undivided half of thirty-one hundred and forty-tw
(3142) acres of land situated and being in the said county of H
dalgo and State of Texas, fronting six hundred and fifty-one (65
Mexican varas, base line river front, in width, upon the Rio Gran
river, with the meanders, and extending back north, between pa
allel lines, thirty thousand varas, (30000), more or less, to the re
line of the grant of which it forms a part for quantity; the sai
lands commonly and generally known as the "Kidder lands," an
being the lower eastern part and side of that certain larger tract
grant of land in said county and State, commonly known as an
called "Los Toritos," originally granted to Maximo Dominguez.

6th. One undivided half of forty-four hundred and twenty-eigh
(4428) acres of land out of and forming part of the Ojo de Agu
portion of that certain larger tract or grant of land lying and bein
situated in one body, partly in each of the said counties of Camero
and Hidalgo State of Texas, comprising 35 leagues, more or les
commonly known as and generally called the Mesteñas tract o
grant originally granted by the Spanish government to Vicent
Hinojosa.

And *hwereas*, the said Charles B. Combe, M. D., as surviving hus
band of the said Kate M. Combe is under the law entitled to a
estate for life in one third of all the said lands which was the sep
arate property of the said Kate M. Combe.

And *hwereas*, the estate of the said Kate M. Combe consisted als
in part of personal property consisting of horse and cattle stock

household furniture and effects money, credit, accounts, etc., etc. The same being the community property of herself and the said Charles B. Combe, M. D., her husband, which upon her death by the terms of said will vested in her said childre-, heirs and legatees.

And whereas there are due State and county taxes to a large amount upon the separate estate of the said Kate M.
285 Combe, and the community estate of herself and her husband as well.

And *hw*ereas, there are due and unpaid two certain debts created by the said Charles B. Combe, M. D., and the said Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe, one amounting to sixteen hundred dollars, ($1600.00) United States currency, principal and the interest accrued thereon which is due to the First National Bank of the City of Brownsvill-, secured by a mortgage upon a part of the said Concepcion de Carricitos land, and the other for the sum of one thousand dollars, ($1000.00) United States currency, principal and interest thereon accrued, due Captain Rob't Dalzell, of the same residence and secured by a mortgage upon said town lots from one (1) to six (6) inclusive in said block thirty-nine, (39), city of Brownsville.

And -hereas, under and by the terms of the said will, of the said Kate M. Combe, deceased, there is due and owing to the Convent of the Incarnate Word of the city of Brownsville, a legacy of five hundred dollars, ($500.00) United States currency, and also due and owing to the Catholic church of the said city of Brownsville, a similar legacy of five hundred dollars, ($500.00) United States currency,—all of which is due and unpaid.

And *hw*ereas, each and all of the said parties have in all things agreed and by these presents do agree to a full settlement and partition of all the estate real, personal and mixed of the said Kate M. Combe, and also of the community property and estate of her, the said Kate M. Combe, and her husband the said Charles B. Combe, M. D., and a full and final settlement of all matters of account between them in anywise growing out of, connected with, or touching said estates and property.

Now therefore, in consideration of the premises, we, the undersigned Frederick J. Combe, Charles B. Combe, Jr., Frank B. Com*eb*, Joseph K. Combe Emile P. Combe, and Charles B. Combe, M. D., of the said county and State do agree and *r*ach with the other does hereby agree upon the following settlement and partition of the *d*aid separate and community estates of the said *of the said* Kate M. Combe, deceased, to-wit:—

Share No. 1.

The said Frederick J. Com*eb* shall hereafter have, own and hold in severalty:

1st. Seven hundred and eighty-five and one-half (785½)
286 acres of land being one equal undivided fourth of the said

3142 acres in Hidalgo county, Texas, hereinbefore more fully described and known as and called the Kidder tract of land.

2nd. Four thousand six hundred and thirty-seven (4637.5) in the county of Cameron, Texas, being the undivided one-half of said portion No. 3, of the said share No. 2, of the said final decree of partition in cause No. 1606, Charles B. Combe, M. D. *et al. vs.* Anette P. Hicks, *et al.*, of the lands of the said Concepcion de Carricitos grant as hereinbefore more fully described.

3rd. One equal undivided half of the said town lot No. 7, in boock T., and all improvements thereon in the said city of Brownsville, as hereinbefore more fully described.

Share No. 2.

The said Charles B. Combe, shall hereafter have, own and hold in severalty,

1st. Twenty-two hundred and fourteen (2214) acres of land in Cameron county, Texas, being an equal undivided one-half of the 4428 acres out of the Ojo de Agua portion of the Mesteñas tract or grant as hereinbefore more fully described and set out.

2nd. One equal undivided half of said town lot- one (1) two (2) three (3) four (4) five, (5) six (6) in said block thirty-nine (39) in the said city of Brownsville, as hereinbefore more fully described.

3rd. Two hundred and thirty-two and one quarter (232¼) acres of land in Cameron county, Texas, being the undivided one-fourth of share No. 8, in and by the terms of the final decree of partition of the Espiritu Santo grant in cause No. 1346, M. Kenedy, R. King, *et als. vs.* Thomas Carson, administrator, etc., Maria Josefa Cavazos, *et al.*, known as the Capetaeño tract as hereinbefore more fully described.

4th. Sixteen hundred and sixty and one-half (1660.5) acres of land, undivided in and forming part of said (3017.5) three thousand and seventeen and one-half acres of land situated and being in the county of Hidalgo and State of Texas, fronting upon the Rio Grande river, and extending back in a northerly direction to the rear line of the porcion of which it forms a part for quantity; the said lands being the western part of porcion No. 53, of the
287 ancient jurisdcition of the town of Reynosa, originally granted by the Spanish government to Francisco de la Garza.

Share No. 3.

The said Frank B. Combe, shall hereafter have, own and hold in severalty,

1st. Thirty-seven hundred and thirty-six and one-eighth (3736⅛) acres of land in said county of Hidalgo and State of Texas, being the equal undivided one-half of the said 7472.25 acres of land hereinbefore more fully described and mentioned as being a part of that certain 9 leagues of land known as and called the Melado tract; the

said Melado tract being a divided and separate part of the Cardenena or Salt Lake grant, Juan José Balli, original grantee.

2nd. Four hundred and nineteen and one-half (419½) acres of front land in the county of Cameron, State of Texas, being an equal undivided one-half of that certain tract (grant) of land hereinbefore more fully described and known as the Medrano tract, the said Medrano tract being out and forming a part of the Concepcion de Carricitos tract, being all of share No. 3, in and by the terms of the decree of partition of said tract hereinbefore mentioned.

3rd. Town lot No. 9, in block No. 91, ninety-one*n* the said city of Brownsville, according to George Lyons' survey, map and plat of the said city as hereinbefore mentioned and more fully described.

Share No. 4.

The said Joseph K. Combe shall hereafter have, own and hold in severalty,—

1st. Seven hundred and eighty-five and one —(785.5) acres of land, being one equal undivided fourth of the said 3142 acres in Hidalgo county, Texas, hereinbefore more fully described and known as and called the Kidder tract of land.

2nd. Four thousand six hundred and thirty-seven and one-half (4637.5) acres of land in the county of Cameron and State of Texas, being the undivided one-half of the said porcion No. 3, of the said share No. 2, in the said final decree of partition in cause No. 1606, Charles B. Combe, *et al. vs.* Annette P. Hicks, *et al.*, of the lands of the said Concepcion de Carricitos grant as hereinbefore more fully described.

3rd. Fifty-five (55) acres of front land in the county of Cameron, State of Texas, out of the Espiritu Santo grant, being one
288 equal eighth of 440 acres of land known as the Villa Nueva tract. Said Villa Nueva tract being all of share No. 4, in and by the terms of the decree of partition of the said Espiritu Santo grant in cause No. 1346, M. Kenedy, R. King, *et als. vs.* Thomas Carson, administrator, *et als.*, as hereinbefore more fully described.

Share No. 5.

The said Emile P. Combe shall hereafter have, hold and own in severalty,—

1st. Thirty-seven hundred and thirty-six and one-eighth (3736.8) acres of land in said county of Hidalgo, State of Texas, being the equal undivided half of the 7472.4 acres of land hereinbefore more fully described and mentioned as being a part of that certain 9 leagues of land known as and called the Melado tract. The said Melado tract being a divided and separate part of the Cardeñea or Salt Lake grant Juan Jose Balli, original grantee.

2nd. Four hundred and nineteen and one-half (419.2) acres of front land in the said county of Cameron and State of Texas, being

an equal undivided one-half of that certain tract hereinbefore more fully described and known as the Medrano tract. The said Medrano tract being out of and forming a part of the said Concepcion de Carricitos tract, and being all of share No. 3, in and by the ter*sm* of the said decree of partition of the said tract hereinbefore mentioned.

3rd. Town lot No. eight (8), in block No. 91, in the said city of Brownsville, according to Geor-e Lyons' survey, map and plat of said city, as hereinbefore mentioned and fully described.

And in order to make equal the value of the respective shares as hereinbefore set out the said parties receiving the said share or to pay to the others in cash in lawful currency of the United States, on or before the execution of these presents, the following sums respectively,—the said Frederick J. Combe is to pay to the said Emile P. Combe, the sum of one hundred and twenty-seven 75 / 100 dollars ($127.75 / 100).

2nd. The said Frederick J. Combe is to pay to the said Frank B. Combe, the sum of nineteen 5 / 100 dollars ($19.05)

3rd. The said Charles B. Combe, is to pay to the said Frank B. Combe, the sum of twenty-nine 41 / 100 dollars, ($29.41 / 100).

289 4th. The said Joseph K. Combe is to pay to the said Frank B. Combe, the sum of seventy-nine 31 / 100 dollars, ($79.30 / 100).

Share No. 6.

The said Charles B. Combe, M. D., shall hereafter have, hold and own in severalty,—

1st. Fifteen hundred and seventy-one (1571) acres of land being an equal undivided half of the said 3142 acres in Hidalgo county, Texas, known as and called the Kidder tract as hereinbefore mentioned and more fully described. The said Kidder tract being a part of Los Toros grant, Maximo Dominguez, original grantee.

2nd. Twenty-two hundred and fourteen (2214) acres of land in Cameron county, Texas, being an equal undivided half of the 4428 acres out of the Ojo de Agua portion of the Mesteñas tract or grant, as hereinbefore more fully set out and described.

3rd. One equal undivided half of said town lots one (1) two (2) three (3) four (4) five (5) six (6) in block thirty-nine, (39), in the said city of Brownsville, as hereinbefore more fully set out and described.

4th. All of the town lots five and six in block No. 55, with all improvements thereon in the said city of Brownsville, fronting fifty (50) feet each on Elizabeth street, according to George Lyons, survey, map and plat of the said city. Said lots and the improvements thereon known and called "Combe homestead."

5th. All of said town lot No. one (1) in boock No. 67, and all improvements thereon in the said city of Brownsville, fronting fifty feet on Washington street, according to George Lyons' survey, map and plat of said city. Said lot and improvements thereon called the Stable lot.

The undivided one half interest of the said F-ederick J. Combe,

Charles B. Combe, Jr. Frank B. Combe, Joseph K. Combe and Emile P. Combe, in the said Combe homestead and Stable lot having this day been conveyed by them to the said Charles B. Co-be, M. D., for and in consideration, among other things of the conveyance and relinquishment to them and to each of them of the life-estate of *the* Charles B. Combe, M. D., in all the lands which was the separate estate of their said mother, the said Kate M. Combe, deceased. The said conveyance from them of their interest in said Combe homestead and Stable lot and to them of said life-estate now here specially referred to and in all things made part hereof.

290 6th. One equal undivided half of the said town lot No. (7) seven in block No. T., and all the improvements thereon in the said city of Brownsville, as hereinbefore more fully described.

7th. All the household and *and* kitchen furn-*tire* in and upon and about the said Combe homestead and personal effects which was the community property of him, the said Charles B. Combe, M. D. and his wife, the said Kate M. Combe, deceased, save and except the horse and cattle stock.

1st. Seventy-one hundred and fifty and one-half (7150.5) acres of land out of and forming a part of that part of the said Espiritu Santo grant known as the Paredes tract, and being all the land undivided belonging to the estate of said Kate M. Combe, in and out of share No. 19, in and by the terms of the decree of partition of the said Espiritu Santo g*l*ant, is to be henceforth owned and held (in common with the other owners of *sa*re No. 19) by them in common, the said Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe, in the proportion of one equal fifth being fourteen hundred and thirty and one-tenth acres to and as the *saher* of each of them therein.

2nd. The one-eighth interest undivided of the said Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe, of the certain labor of land in the said county of Cameron and State of Texas, known as Clark's island, as hereinbefore more fully described is to be henceforth held and owned by them (in common with the other co-owners thereof) in common in the equal shares and proportion of one-fifth of the said one-eighth to each of them.

3rd. The three thousand seventeen and one-half (3017.5) acres of land in the county of Hidalgo and State of Texas, out, forming and being the western part of said porcion No. 53, of the ancient jurisdiction of the town of Reynosa, Francisco de la Garza, original grantee, as hereinbefore mentioned and more fully described, is henceforth to be held and owned by them in common the said Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe (in common with the othe*l* co-owners of the said porcion) in the share and proportion of one equal fifth to each of them, and undivided 1660½ acres of this tract or porcion having hereinbefore — set apart and allotted to Charles B. Combe, Jr.

291 The share and proportion of one-fifth to each of them, being two hundred and seventy and two-fifth (271 2/5) acres to each.

4th. Sixteen hundred and sixty and one-half acres of land in Hidalgo county, State of Texas, being the undivided one-fourth of the said one and one-half leagues of land belonging to the estate of the said St-phen Powers, deceased, in and forming a part of the Cardenena tract or grant or Salt Lake grant, as hereinbefore more fully described and more fully set out is hence*forth* to be held and owned in common by Frederick J. Combe, Charles B. Combe, Frank B. Combe, Joseph K. Combe and Emile P. Combe, (in common with the other co-owners of the said land) in the *saher* and proportion of one equal fifth to each of them being, (332 1/10) three hundred and -hirty-two and one-tenth to each of them.

All of the horse-stock belonging to the separate estate of the said Kate M. Combe, or to the community estate of herself or her husband, which remains undisposed of shall be and become and is hereby agreed to be made the sole and separate property of the said Frank B. Combe, all of the cattle-stock of the separate estate of the said Kate M. Combe, or the community estate of herself and her said husband, which remains undisposed of is hereby agreed and declared to be the property of them, the said Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe, and Emile P. Combe, to be hereafter owned and held by them in shares and proportions of one equal fifth to each of them.

That the said mortgage debt of one thousand dollars U. S. currency, principal and interest accrued thereon, owing by all the parties hereto in equal proportions to Captain Robert Dalzell, as hereinbefore mentioned and set out is to be paid by them the said Frederick J. Combe, Charles B. Combe, Frank B. ——, Jos. K. Combe, and Emile P. Combe, in the proportion of one equal fifth each.

That the said mortgage debt of sixteen hundred dollars ($1600.00) U. S. currency principal and interest accrued thereon due to the First National Bank of Brownsville is to be in all things assumed and paid by the said Frederick J. Combe, Charles B. Combe, Frank B. Combe, Jos. K. Combe, and Emile P. Co-be, the said Frank B. Combe having already paid his full part and proportion thereof

292 That all State, county and city taxes now due and actually unpaid upon any of the property hereinbefore mention- and described shall be paid by them, the said Frederick J. Combe, C-as. B. Combe, Frank B. Combe, Jos. K. Combe, and Emile P. Combe, in the proportion of one equal fifth each.

That the special legacies created and given in and by the terms of the last will and testament of the said Kate M. Combe, in the respective sums of ($500.00) U. S. currency to the Convent of the Incarnate of the city of Brownsvill-, and the sum of ($500.00) U. S. currency, to the Cath-lic church of the city of Brownsvill-, is to be paid by them; the said Frederick J. Combe, Charlrs B. Combe,

Frank B. Combe, Jos. K. Combe and Emile P. Combe, in the proportion of one-equal fifth each.

That all matters of accounts for any monies received or expended by either of the parties since the death of *the* Kate M. Combe, in anywise growing out of or connected with her separate estate or the community estate of herself and her said husband, have been and are now hereby declared satisfactorily balanced, adjusted and closed by and between the respective parties hereto.

That the final decree of partition in cause No. 1346, M. Kenedy, R. King, *et al. vs.* Thomas Carson, administrator, Maria Josefa Cavazos, *et al.* Cause No. 1348, B. O. Hicks, executor, etc., *et als.*, *vs.* Anastacio Treviño, *et als.*, and cause No. 1606, Charles B. Combe, *et als. vs.* Annette P. Hicks, *et ald.*, hereinbefore mentioned are now specially part hereof for greater certainty, etc.

That said Charles B. Combe, M. D., in so far as the other parties hereto — concer-ed is now hereby forever discharged as executor of the will of the said Kate M. Combe, deceased, and in all things, released and discharged from all liability to either of the parties hereto, by reason of said executorship.

That hence*ofrth* and forever each of the said parties hereto shall own have, and held in severalty in fee simple all of the property real and personal herein and hereby partitioned, allotted and set apart to them, respectively, free from any and all interest,
293 ownership, right, title or claim thereto of each of the other parties hereto respectively; and that these presents shall in all things have the force and effect of a conveyance in the usual form with full warranty of title from each of the respective parties hereto, to each of the parties hereto respectively, as to all of the property, real and personal, herein and hereby allotted, partitioned and set apart to each of them, respectively.

In testimony of all of which, witness the hands of each of them, the said Charles B. Combe, M. D., Frederick J. Combe, Charles B. Combe, Frank B. Combe, Joseph K. Combe and Emile P. Combe, this the sixth (6th) day of April, A. D., 1896.

C. B. COMBE, M. D.
FREDERICK J. COMBE, M. D.
CHARLES B. COMBE, JR.
F. B. COMBE.
JOSEPH K. COMBE,
By FRED'K J. COMBE,
His Agent and Attorney in Fact.
EMILE P. COMBE.

Signed and delivered in the presence of:—
H. M. FIELD.
A. A. BROWNE.

294 THE STATE OF TEXAS, }
County of Cameron. }

Before me, Joseph Webb, clerk of the county court in and for Cameron county, Texas, on this day personally appeared C. B. Combe, Frederick J. Combe, M. D., Charles B. Combe, Jr., F. B. Combe, Joseph K. Combe (by his agent and attorney in fact, Frederick J. Combe) and Emile P. Combe, known to me to be the persons whose names are subscribed to the foregoing instruments, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ninth day of April, A. D., 1896.

JOS. WEBB,
[L. S.] *Cl'k Co. Ct., Cameron Co., Texas.*

Filed for record at 10:15 o'clock, a. m., April 9th, A. D., 1896, and duly recorded at 1:15 o'clock, p. m., April 10th, A. D., 1896.

JOSEPH WEBB,
Cl'k Co. Ct., Cameron Co., Texas,
By HOWARD MILLER, *Deputy.*

THE STATE OF TEXAS, }
County of Cameron. }

I, Joseph Webb, clerk of the county court in and for Cameron county, Texas, do her-by certify, that the above and foregoing thirteen (13) pages contain and are a full, true and correct copy of an instrument of record in my office, in Book K. on pages numbers four (4) to sixteen, (16) inclusive, deed records of Cameron county, Texas.

Witness my hand and seal of office, this 18th day of August, A. D., 1898.

JOSEPH WEBB,
[SEAL.] *Clerk County Court, Cameron County, Texas.*

(Endorsed :) Certified copy of partition, settlement, etc., of estate of Kate M. Combe, deceased.—C. B. Combe, M. D., *et al.* with F. J. Combe, *et al.*

295 Guardianship of the Estate of FRANK B. COMBE ET ALS., Minors. No. 202.

JUNE 27TH, 1896.

This day came on to be heard for examination the final account of C. B. Combe guardian of said minors' estate. And it appearing to the court that said wards have attained their majority and have joined with their co-heirs in a deed of partition of estate assuming

all liability due by said estate and agreeing that all manners of account for any monies received or expended by the guardian or either of said heirs since the date of ancestor Kate M. Combe, deceased, from whom these wards inherited said estate, have been balanced adjusted and closed, said deed of partition and waiver duly of record in Book "K" on pages 4 to 16 of the real estate records of Cameron county Texas; it is ordered that said final report of guardian be approved and recorded by the clerk. and also came on to be heard the petition of the guardian to be discharged, and it appearing to the court that all of the debts of the said estate known to exist have been paid off and assumed by the said wards and the co-heirs of said Kate M. Combe, deceased, to the entire satisfaction of the creditors of said wards' estate, and there is no further necessity for guardianship herein. It is ordered adjudged and decreed by the court, that upon payment of all costs of court incurred in this behalf the guardianship herein be closed and cause dropped from the docket and the guardian released from further liability herein.

Guardianship of the Estate of FRANK B. COMBE ET AL., Minors. No. 202.

In County Court, Cameron County, Texas, June Term, A. D. 1896.

To the Hon. Thomas Carson, judge of said court:

C. B. Combe, guardian of the estate of Frank B. Combe, Joseph K. Combe and Emile P. Combe, as minors: unto your honor respectfully represents that the above named wards attained their majority long since, and on the 6th day of April, A. D. 1896, they together with F. J. Combe and Charles B. Combe, Jr. *m.* and this petitioner, all heirs at law of Kate M. Combe, deceased, joined in a deed of partition of the separate and community property of the said Kate M. Combe and said heirs and wards, assumed all liability due by said estate, and further agreed "that all matters of account for any moneys received or expended by either of the parties
296 since the death of the said Kate M. Combe in anywise growing out of or connected with the separate estate or the community estate of herself and her said husband have been and are now hereby declared to be satisfactorily balanced, adjusted and closed by and between the respective parties hereto. Said deed of partition and waiver duly acknowledged and recorded in the county clerk's office of this court in Book K on pages 4 to 16 real estate records of Cameron county, Texas.

That by reason of said deed of partition between these wards and the other heirs of the estate of said Kate M. Combe, they having arrived at the age of maturity and entitled to their estate no further necessity exists for guardianship herein wherefore petitioner prays that this guardianship be closed and this guardian released from

further responsibility herein and for such other and fuller orders as to the court may seem proper, etc.

(Signed) C. B. COMBE, *M. D.*,
Guardian.

Sworn to and subscribed before me this 15th day of June, A. D. 1896.

[L. S.] E. H. GOODRICH,
Notary Public.

Endorsed: No. 202. Guardianship of the estate of Frank B. Combe *et als.*, minors. Final report of C. B. Combe, guardian. Filed June 18, 1896. J. Webb, county clerk, H. M. deputy.

THE STATE OF TEXAS, }
County of Cameron. }

I, Joseph Webb, clerk of the county court in and for said county and State do hereby certify that the above and foregoing is a full, true and correct copy of the order of court made and entered at the regular June term, A. D. 1896, of the county court of said
297 Cameron county, in the guardianship of Frank B. Combe, *et al.*, minors, also the petition of the guardian for discharge, etc. in said guardianship. I further certify that said order of court and petition are duly entered of record upon the probate minutes of the county court of said county, in volume I, on pp. Nos. 45 and 46.

Witness my hand and seal of the county court of said county at office in the city of Brownsville, Texas, this the 18th day of August, A. D. 1898.

JOSEPH WEBB,
Cl'k County Court, Cam. Co., Texas.

298 STATE OF TEXAS, }
County of Cameron. }

Power of attorney — Charles S. Dana and Marie Grogan Dana, his wife; Mrs. Agnes A. Browne, Mrs. Annette P. Hicks, Miss Frances E. Powers, and Dr. C. B. Combe
to
George Connor.

Know all men by these presents, that, whereas, all that certain ten (10) leagues of land comprising forty-four thousand two hundred and eighty (44,280) acres commonly and generally and specially known as and called "The Paredes lands," out of and forming part of that larger grant to J. S. de la Garza, called and known as "the Espiritu Santo grant," is held and owned in common by Charles S.

Dana and Marie Grogan Dana, his wife, of Boston in the State of Massachusetts, and the heirs and devisees of Stephen Powers, late of Cameron county, Texas, deceased, said Powers' heirs and devisees being Mrs. Agnes A. Browne, Mrs. Annette P. Hicks, Miss Frances E. Powers and Mrs. Kate M. Combe, now deceased, the said Powers heirs owning five-eighths (⅝) undivided of said Paredes ten leagues and the said Dana and wife owning three-eighths (⅜) undivided thereof, and whereas said owners of said Paredes lands are desirous of and have agreed to employ George Connor of the said county of Cameron, Texas, to procure tenants for said lands and lease the same to them and to collect the rents from all occupants and tenants upon said lands and to personally watch over and protect said lands from all trespass, waste and unlawful occupancy, and whereas said owners have mutually agreed with said George Connor to pay him as full compensation for services twenty-five (25) per centum of all rents and issues actually collected in cash by him in and about the premises, and have agreed and do hereby agree to employ him, the said George Connor for said purposes during good behavior and until said land is finally partitioned among them the said
299 owners, and whereas the said George Connor has promised and agreed and by the acceptance of these presents binds himself to and with the said owners of said lands for said compensation to devote all of his time and energies to the said duties necessary in the premises to procure all possible tenants, to collect all rents due, and by all means in his power to protect and preserve said lands, and the pasturage and timber thereon until the final partition thereof as aforesaid, the said Connor to pay over to —— —— of the said county and State all such rents and profits collected by him as fast as when collected by him, first deducting the said percentage of and for his compensation.

Now, therefore, in consideration of the premises we Charles S. Dana and Marie Grogan Dana, his wife of the city of Boston in the State of Massachusetts, acting by and through James B. Wells, their duly and authorized agent and attorney in fact and Annette P. Hicks (a widow) and Frances E. Powers, (*feme sole*) and Agnes A. Browne (*née* Powers), joined herein by James A. Browne, her husband, and Charles B. Combe, M. D., executor of the will of Kate M. Combe, deceased, all of the said county of Cameron and State of Texas, and owners of the said Paredes ten leagues of land, have nominated, made, constituted and appointed and by these presents do nominate, make, constitute and appoint the said George Connor of the county of Cameron and State of Texas our true and lawful agent and attorney in fact for us and for each of us and in our name and each of our names, places and steads, for the purposes and under the conditions and compensation and for the period hereinbefore set out, and enunciated and enumerated, hereby fully ratifying all that our said attorney may lawfully do or cause to be done in the premises and giving unto all of his said acts the same force and validity as if done by us.

Witness our hands this fourth day of May, 1889.

CHARLES S. DANA AND
300 MARIE GROGAN DANA, *His Wife,*
Per JAMES B. WELLS,
Their Attorney in Fact.
AGNES A. BROWNE,
Per JAMES A. BROWNE.
JAMES A. BROWNE.
C. B. COMBE.
ANNETTE P. HICKS,
Per EMILE KLEIBER.
FRANCES E. POWERS,
Per EMILE KLEIBER.

Witness:
FRANK FEUILLE.

STATE OF TEXAS, }
County of Cameron. }

Before me, Louis Kowalski, clerk of the district court of Cameron county, Texas, on this day personally appeared the following persons: James B. Wells, as attorney in fact for Charles S. Dana and Marie Grogan Dana his wife, James A. Browne for self and James A. Browne for Agnes A. Browne, his wife, C. B. Combe, Emile Kleiber as attorney for Annette P. Hicks and Frances E. Powers, each personally known to me to be the persons whose names are subscribed to the foregoing instrument in writing and they each and every one acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this fourth day of May, A. D. 1889.

LOUIS KOWALSKI,
[SEAL.] *Clerk Dist. Ct. Cam. Co., Texas.*

Filed for record at 3:40 o'clock p. m. July 15, A. D. 1897, and duly recorded at five o'clock p. m. July 15, 1897.

JOSEPH WEBB,
Cl'k Co. Ct. Cam. Co. Texas,
By HOWARD MILLER, *Deputy.*

THE STATE OF TEXAS, }
301 *County of Cameron.* }

I, Joseph Webb, clerk of the county court in and for Cameron county, Texas, do hereby certify that the above and foregoing four pages are a full, true and correct copy of an instrument of record in my office in Book A, pages 304, 305 and 306, record of powers of attorney, Cameron county.

Witness my hand and seal of office this 27th day of June, A. D. 1898.

[SEAL.] JOSEPH WEBB,
Cl'k Co. Ct., Cam. Co., Texas.

302 THE STATE OF TEXAS, }
County of Cameron. }

In the County Court of Cameron County, Texas.

In the Matter of the Estate of Mrs. KATE M. COMBE, Deceased.

Inventory and Appraisement of all and Singular the Estate, Real, Personal, and Mixed, of Mrs. Kate M. Combe, Deceased.

One fourth interest in 26,354 acres of land in the Concepcion de Carricitos tract in Cameron county, appraised at	$3,500.00
One fourth interest in 6¼ leagues of land undivided in tract, known as the "Paredes" tract of the "Espiritu Santo," grant appraised at	4,000.00
One fourth of one half interest in one league of land, more or less in what is known as the "Tijerina" lands of the Espiritu Santo	500.00
One fourth of 250 acres of land more or less, undivided, at Santa Rita, Cameron county, appraised at	125.00
One fourth of one labor just below the city of Brownsville, formerly owned by M. de los Santos appraised	100.00
One fourth of one half of one labor in the city of Brownsville, appraised at	
One fourth of one half of Clarke's island	25.00
One fourth of 6¾ leagues of land, more or less, undivided in the tract known as the "Melado" in Hidalgo county. appraised at	3,500.00
One fourth of 1½ leagues of land, more or less, undivided in the "Salt Lake" tract in Hidalgo Co. appraised at	150.00
One fourth of porciones Nos. 53 and 54 in Hidalgo county. These "porciones" are 1,000 varas in width on the Rio Grande river by 5 leagues in depth, appraises at	500.00

One fourth interest in the following described town lots in the city of Brownsville, to-wit;

Lot #3	in block	#51	50.00
" 2	"	#59	50.00
" 8 & 9	"	#91	125.00
" 7 & 8	"	#95	125.00
" 7	"	#116	75.00

* Community property:

302*a* One half of 2,700 acres of land, more or less, undivided, in Hidalgo county, known as the "Sauz" appraised at..... 1,300.00
One half of one league of land in the Mestenas or "Ojo de Agua" tract in Cameron county, appraised at..... 500.00
One half interest in lots Nos. 1 to 6 in block No. 39 in the city of Brownsville appraised at..... 1,000.00
One half interest lot # 1 in block No. 67 in the city of Brownsville appraised at..... 250.00
One half interest lot # 6 in block "T"..... 250.00
One half interest in lots # 5 and # 6 in block # 55..... 2,500.00
200 head horse stock @ 10.00 ..... 2,000.00
700 " cow " @ $7.00 ..... 4,900.00
Cash in U. S. currency 300.00

* Claims due the estate:

E. Kleiber, money loaned..... 1,300.00

Interests in unsettled accounts and claims of Powers and Maxan in liquidation of Powers and Wells in liquidation and claims heirs of Salinas and others cannot be even approximately appraised.

THE STATE OF TEXAS, }
County of Cameron. }

We, James B. Wells, Emile Kleiber and Jas. A. Browne, appraisers of the estate of Kate M. Combe, deceased, do solemnly swear that the above and foregoing is a full, true and just inventory and appraisement of all and singular of the property, real, personal and mixed and list of claims of the said Kate M. Combe, deceased, that has come to our knowledge.

JAS. A. BROWNE.
EMILE KLEIBER.

Sworn to and subscribed before me this 25th. day of March A. D. 1889,

ADOLPHUS GLAEVECKE,
Cl'k Co. Ct., Cam. Co., Texas.

I, C. B. Combe, executor of the estate of Kate M. Combe deceased, do solemnly swear that the foregoing is a full inventory and description of all the real, personal and mixed property belonging to said estate, so far as I have been able to ascertain.

C. B. COMBE, *Ex'r, & etc.*

302½*a* Sworn to and subscribed before me this 25th. day of March A. D. 1889.

ADOLPHUS GLAEVECKE,
Cl'k Co. Ct., Cam. Co., Texas.

(Endorsed:) No. 187. Estate of Kate M. Combe deceased,—Inventory—Filed March 25th. A. D. 1889—Adolphus Glaevecke—c'k Co. Ct. Cam. Co. Texas.

THE STATE OF TEXAS, }
County of Cameron. }

I, Joseph Webb, clerk of the county court in and for Cameron county Texas do hereby certify that the above and foregoing is a full, true and correct copy of the "inventory." In the matter of the estate of Kate M. Combe, deceased, as taken from the original now on file in my office and as the same appears and is duly entered of record upon the probate minutes of the county court of said county in volume "G" pages Nos. 535, 536 and 537.

Witness my hand and the seal of the court of said county, at office in the city of Brownsville, Texas, this 18th. day of August A. D. 1898.

JOSEPH WEBB,
Clerk County Court, Cameron County, Texas.

302½ In the name of God, Amen.

I Kate M. Combe nee Impey of the city of Brownsville in the County of Cameron and State of Texas, do make and publish this last will and testament, hereby revoking all wills by me heretofore made.

First; I give and bequeath to the Church of the Immaculate Concepcion of this city the sum of Five Hundred Dollars.

Second; I give and bequeath to the convent of the Incarnate Word of this City of Brownsville the sum of Five Hundred Dollars.

Third; All of the rest and residue of my estate of which I shall die seized and possessed or to which I shall be entitled at the time of my decease I give, devise and bequeath to my beloved Sons Fred J. Charles B. Frank B. Joseph K. and Emile P. Combe to be equally divided between them share and share alike.

Fourth; I direct that the aforesaid legacies to the Church of the Immaculate Concepcion and the Convent of the Incarnate Word shall be paid from the proceeds of the sale of my lands or proportionally by my heirs of said lands are delivered to them unsold.

Fifth; I constitute and appoint my beloved husband Charles B. Combe to be the executor of this will, with full powers, and I also nominate and appoint my said husband Chas. B. Combe the guardian of the estate of our said children.

Sixth; It is my will that no other action shall be had in the County Court in the administration om my estate than the registry and probate of this will and that no security shall be required of my said husband as executor of this will or as guardian as aforesaid.

In witness whereof I have hereunto set my hand this Seventeenth day of August A. D. 1887 in the presence of Emile Kleiber and B. O. Hicks who attest the same at my request.

K. M. COMBE.

The above instrument was now here subscribed by Kate M. Combe the testatrix in our presence and we in her presence and at her request sign our names hereto as attesting witness-.

EMILE KLEIBER.
B. O. HICKS.

302c (Endorsed:) No. 187. Last will of Kate M. Combe dec'd— Exhibit "A" Filed for probate—November 28th. A. D. 1887— Adolphus Glaevecke, clerk of the county court of Cameron county, Texas.

THE STATE OF TEXAS, }
County of Cameron, }

I Joseph Webb, clerk of the county court in and for Cameron county Texas, do hereby certify that the above and foregoing is a full true and correct copy of the last will and testament of Kate M. Combe, deceased, together with all endorsements thereon, as taken from the original now on file in my office and as the same appears of record upon the probate minutes of the county court of said county in volume "G" pages 453 and 454.

Witness my hand and the seal of the county court of said county, at office in the city of Brownsville, Texas, this 18th. day of August A. D. 1898.

JOSEPH WEBB,
Clerk County Court, Cameron County, Texas.

303 *Plea in Abatement of Defendant James Stillman.*

In the U. S. Circuit Court in and for the Western District of Texas, at Brownsville Sitting.

C. B. COMBE, Executor, etc., }
vs. } In Equity. No. 21.
JAMES STILLMAN ET AL. }

The plea of the defendant James Stillman.

Said defendant by protestation, not waiving his plea to the jurisdiction or any other pleas hereto filed questioning the jurisdiction of this court, but specially insisting on same, and appearing solely for the purpose of presenting this plea, and not confessing or acknowledging all or any of the matters and things in complainant's bill mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, doth plead thereto, upon information and belief, and for plea says that the court ought not to take cognizance of, or hear or sustain the aforesaid action because

complainant, at the commencement of the said suit, was not, nor has he since been, nor is he now the executor of the estate of Stephen Powers, deceased, as in his bill of complaint alleged, nor was he at the commencement of said suit, nor thence hitherto, nor *how*, authorized to sue herein as such executor nor had he at the commencement of said suit; nor thence hitherto, nor has he now any interest as such executor in the subject matter of said suit whatever, but that in truth and in fact he had long before the commencement of said suit ceased to be such executor, closed his trust as such, and said executorship finally closed and settled, and said complainant therefore is without capacity to sue herein as such executor and was without such capacity at the commencement of said suit and thence hitherto for this:

He says that complainant sues herein as the executor of the estate of Stephen Powers, deceased, and alleged that said Stephen Powers at his death owned a part of the land described in com-
304 plainant's bill as the Fort Brown reservation, and that by reason of such ownership said estate is entitled to a portion of the fund alleged to have been collected by this defendant James Stillman and his co-defendant, Thomas Carson, as administrator aforesaid, from the United States Government in payment of said reservation and the rents arising therefrom. And defendant says that complainant's claim that said Powers so owned a part of said reservation is based upon the fact that said Powers, at his death, owned in common with Maria Grogan Dana, a certain tract of land known as the Paredes tract, described as ten sections of square leagues off of the eastern part of the middle third of the Espiritu Santo grant, and it will be contended and is contended by complainant, that the said reservation is in part within the boundaries of the said Paredes tract.

That if no part of said reservation is within the boundaries of said Paredes tract, then neither said Powers or said Dana ever owned any part of said reservation and consequently never had any right to any part or portion of said fund referred to in complainants' bill.

And defendant says that said Powers, on the 29th day of July, 1869, executed his certain will, a copy of which is attached to complainants' bill herein, and defendant begs to refer to same and make same a part of this plea. That after providing therein for certain special money legacies, said Powers devised and bequeathed thereby all of his property of whatever description in equal shares and portions to his two daughters, Agnes Anastacia and Frances Euphemia Powers, and his two step-daughters Kate Maria Impy, wife of Dr. C. B. Combe and Annette Pauline Impy, wife of B. O. Hicks, and that he further provided by said will as follows:

"And I do further order and appoint that Kate Maria Combe, in connection with her said husband, be testamentary guardian of the personal estate of my daughter Agnes Anastacia, and I also further order and appoint that Annette Pauline Hicks and her husband

B. O. Hicks, be testamentary guardian of the personal estate of my daughter Frances Euphemia; provided that if either of the
305 said Kate Maria or Annette Pauline, should die before the said Anastacia or Frances Euphemia should become of age, then and in that case the survivor of the two former, in connection with her respective husband shall be the guardians of the persons and estates of the two latter. And further provided that in case of the death of both of the said Kate Maria and Annette Pauline, before my two minor children arrive of age, and then in that case I appoint my late wife's sisters and the survivors of them to be such guardians as above provided.) 'And I also direct that any and all lands of which I may die seized be kept together until my youngest daughter arrives of age; and I further order and appoint that all my just debts be paid. And I do further appoint Dr. C. B. Combe and B. O. Hicks executors of this my last will and testament, with full powers to administer and liquidate the same.'"

'I do further provide and will that no action be had in the probate court in relation to my estate than the probate of this my will and registry of the same, and the return of any inventory of my estate as provided by law, waiving in this behalf all securities that would otherwise be required of them and of the testamentary guardians herein provided."

That on the 31st day of December, 1881, said Powers executed a certain codicil to said will wherein he made certain other moneyed legacies but no other changes in said will, but on the contrary specified in said codicil as follows:

"This codicil and the terms thereof not to alter or in any manner change the terms of my said last will only insomuch as this is intended to and does create an addition to the bequests and devises to the said Annette Pauline Impy Hicks and the said Kate Maria Impy Combe, in the amount of the respective sums herein named, in all and every other respects now hereby reaffirming my said will of July 29th, 1869, and making this codicil part thereof, and hereby expressly revoking every and all other wills and codicils whatsoever."

That on the 5th day of February, 1882, said Powers died in Cameron county, Texas, leaving said will and its codicil as his
306 last will and codicil, the same not having been changed by him in any respect. That thereafter said will and codicil was duly filed for probate in the county court of Cameron county, Texas, and on the 30th day of March, 1884, the same were, by the judgment of said county court, duly probated as the last will of said Powers, and to said judgment, which is an exhibit to complainants' bill, this defendant begs leave to refer and make same a part of this plea. That in said judgment among other things it was decreed as follows:

"It is also further ordered and adjudged that the said applicants Benjamin O. Hicks and Charles B. Combe be and they are now hereby declared to be the executors of said will and estate and that

no further action is required of them, except the filing of an inventory and appraisement of said estate of said decedent in this court, and inasmuch as the said Benjamin O. Hicks, as temporary administrator of said estate, has filed in this court a full, true and correct inventory, appraisement and list of claims, which has been duly approved and recorded in the minutes of this court, it is therefore now here further ordered and adjudged that the same be and it now hereby is in all things approved, confirmed and adopted as the inventory and appraisement of this said estate, and that no further or other inventory and appr-isement be or is required to be made or filed by said executors."

That both said B. O. Hicks and C. B. Combe, on the 7th day of April, 1882, qualified as such executors by taking the oath required by law and thereby became independent executors of said Powers under the laws of Texas, free from the control of said probate court and with power to administer said estate independent of said court.

That on or about the — day of November, 1886, said B. O. Hicks died.

That —— —— was the youngest daughter of said Stephen
307 Powers and that she became of age on or about the — day of —— 18—.

That the said Paredes tract was inventoried by said executor as part of the estate of said Stephen Powers, dec'd. and is being held by him in common with said Marie Grogan Dana.

That no partition of said tract between said Powers or anyone holding under him or representing his estate, has ever been had with said Marie Grogan Dana.

And defendant says he is informed and believes and charges it to be true that all the debts of said Powers' estate have long since been paid and that no necessity for further administration thereof exists. That when said youngest daughter of said Powers became of age, the trust of said executors under said will ceased by the terms thereof. That said administration has in fact been closed, possession of all the property left by Powers given to the devisees and legatees thereunder in accordance with the terms of said will and all legacies duly paid, and said Combe has for many years past and long before this suit was filed ceased to act as such executor or to administer said estate, but on the contrary has fully partitioned same and recognized that his trust was fully and finally ended before this suit was filed for this:

That heretofore, towit, on the — day of —— 188–, a partition of said estate was had between all parties interested therein and interest of each party therein duly set aside. That said C. B. Combe was a party to said partition both individually and as executor of said estate, all of which will more fully appear by reference to copy of said partition attached to reply of this defendant to the rule for contempt served herein on him, and to which reference is now made and same is specially made a part of this plea.

That whilst said Paredes tract was not specifically mentioned in

said partition, ever after same it was held and possessed by the said legatees and devisees under said will of said Powers in common with said Grogan Dana. That thereafter said complainant ceased to administer on said estate of said Powers, and ceased to exercise any dominion or power over same as executor. That on the
308 17th day of August, 1887, said Kate M. Combe executed her last will, a copy of which is hereto attached and made a part hereof. That by said will, after making certain money legacies, she devised and bequeathed all of her property to her sons Fred J. Charles B., Frank B., Joseph K. and Emile P. Combe, and appointed her husband C. B. Combe her independent executor and also the guardian of said children. That on or about the — day of —— 188–, said Kate M. Combe died, and said will was duly probated and said C. B. Combe duly qualified as executor of the estate of said testator and as guardian of her said sons. That he duly returned an inventory of the property of said estate, a copy of which is hereto attached and made a part hereof, and therein specified as part of the said estate of his testator, an undivided one-fourth interest in the said Paredes tract of six and one-quarter leagues of land, and that said inventory was verified by the affidavit of said C. B. Combe to the effect that it was a full inventory and description of all the real, personal and mixed property belonging to said estate so far as said affidavit had been able to ascertain.

That thereafter said C. B. Combe had a full and complete written partition between himself and the said sons of his said wife, of all the property devised and bequeathed to them under her said will, a copy of which instrument is hereto attached and made a part hereof, and which said partition bears date April 6th, 1896.

That in said partition, it was recited among other things, as follows:

"That whereas, Kate M. Combe, late of Cameron county, State of Texas, deceased, died in the said county of Cameron, leaving a last will and testament, since duly probated in the said county of Cameron, by the terms of which her five (5) sons and only children, towit; Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe, were named and made the sole heirs, devisees and legatees of all her estate, real, personal and mixed, and whereas, by the terms of said will, her surviving husband in community, Charles B. Combe, M. D., was named and was
309 thereafter duly appointed and qualified as the sole independent executor of the said will and whereas the estate of the said Kate M. Combe, consists of:

First.

Her separate estate derived through the will of her stepfather Stephen Powers, deceased, which said part and share of the real estate of the said Stephen Powers, as partitioned and set apart in severalty to the said Kate M. Combe (during her life time) and to her said sons and heirs (after her death) is as follows, towit:

3rd. One undivided fourth (¼) of twenty-eight thousand six hundred and two (28602) being seventy-one hundred and fifty and one-half (7150½) acres. The said 28602 acres being an undivided part of 46103 acres which is all of share No. 19 being known as and called the "Paredes tract."

That in said partition frequent reference is made to lands devised and bequeathed to said Kate M. Combe under the said will of said Powers as having been thereafter partitioned off to her.

That in said partition the said "Paredes tract" was specifically set apart to the said sons of said Kate M. Combe, to be held in common by them with the other owners in common thereof, viz: the legatees and devisees under the will of said Powers and the said Marie Grogan Dana, and it was specifically recited in said partition, among other things, as follows:

"And whereas each and all of the said parties" (meaning the parties to said partition) "have in all things agreed and by these presents do agree to a full settlement and partition of all the estate real, personal and mixed of the said Kate M. Combe, and also of the community property and estate of her, the said Kate M. Combe, and her husband, the said Charles B. Combe and her husband the said Charles B. Combe, M. D., and a full and final settlement of all matters of account between them in anywise growing out of, connected with or touching said estate and property. Now, therefore, in consideration of the premises, we, the undersigned, Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K.
310 Combe, and Emile P. Combe, and Charles B. Combe, M. D., of the said county and State, do agree and each with the other does hereby agree upon the following settlement and partition of the said separate and community estates of the said Kate M. Combe, deceased, towit: '* * * seventy-one hundred and fifty and one-half (7150½) acres of land out of and forming a part of that part of the "Espiritu Santo" grant, known as the Paredes tract and being all of the land undivided belonging to the estate of the said Kate M. Combe in and out of share No. 19, and by the terms of the decree of partition of the said Espiritu Santo grant, is to be henceforth owned and held (in common with the other owners of share No. 19) by them in common, the said Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe and Emile P. Combe, in the proportion of one equal fifth, being fourteen hundred and thirty and one-tenth acres to and as the share of each of them therein.'"

The said partition contained likewise, the following stipulations, to-wit:

"That all matters of accounts for any money received or expended by either of the parties since the death of the said Kate M. Combe, in anywise growing out of or connected with her separate estate or the community estate of herself and her said husband, have been and are now hereby declared to be satisfactorily balanced, adjusted and closed by and between the respective parties hereto.

That the final decree of partition in cause No. 1346 / M. Kenedy, R. King, *et als. vs.* Thomas Carson, administrator estate of Maria Josefa Cavazos, *et al.*, cause No. 1348, B. O. Hicks, executor, etc., *et al. vs.* Anastacio Trevino, *et al.*, and cause No. 1806, Charles B. Combe *et al. vs.* Annette P. Hicks, *et al.*, hereinbefore mentioned are now especially made part hereof for greater certainty, etc.

That said Charles B. Combe, M. D. in so far as the other parties hereto are concerned, is now hereby forever discharged as
311 executor of the will of the said Kate M. Combe, deceased, and in all things released and discharged from all liability to either of the other parties hereto by reason of said executorship.

That henceforth and forever each of the respective parties hereto shall own, have and held in severalty, in fee simple, all of the property, real and personal herein and hereby partitioned, allotted and set apart to them respectively, free from any and all interest, ownership, right, title or claim thereto of each of the other parties hereto respectively, and that these presents shall in all things have the force and effect of a conveyance, in the usual form, with full warranty of title from each of the respective parties hereto to each of the other parties hereto respectively as to all of the property real and personal herein and hereby partitioned, allotted and set apart to each of them respectively."

That said instrument of partition was duly signed by the said C. B. Combe and each of the other parties thereto.

That thereafter, towit: on the 15th day of June, 1896, said C. B. Combe filed a certain partition in the county court of Cameron county, wherein he recited said partition and averred that he had in all things settled with his said wards and prayed for his said discharge. That upon hearing of said petition, judgment was duly entered by said county court closing said guardianship and discharging said guardian. And it was especially decreed therein as follows:

"And also came on to be heard the said petition of the guardian to be discharged, and it appearing to the court that all of the debts of the said estate known to exist have been paid off and assumed by the said ward- and the co-heirs of the said Kate M. Combe, deceased, to the entire satisfaction of the creditors of said wards' estate, and there is no further necessity for guardianship herein.

It is ordered, adjudged and decreed by the court that upon
312 payment of all costs of court incurred in this behalf the guardianship herein be closed and cause dropped from the docket and the guardian released from further liability herein."

And defendant attaches copies of said two instruments hereto and makes same parts hereof.

And defendant says that recognizing that the said Powers administration has long since been finally closed and that the trust of said executor has been finally carried out, the various devisees and legatees under said will of said Powers have received the property coming to them thereunder, and particularly said Paredes tract of land, and have caused same to be assessed for taxes against them

and said Maria Grogan Dana, so defendant is informed and believes and charge- to be true ever since the year 1890, and since said 1890 said Combe has not rendered said tract for taxes as executor of said Powers estate, nor has he rendered any property for taxes as such executor, but has treated said executorship as fully and finally closed.

That on the fourth day of May, 1889, said C. B. Combe, as executor of the estate of Kate B. Combe, deceased, Maria Grogan Dana, joined by her husband Cahrles S. Dana, Agnes A. Browne, formerly Powers, joined by her husband James A. Browne, Annette P. Hicks and Frances E. Powers, all executed a certain power of attorney to George Connor, wherein they authorized and empowered him to take possession for them of said Paredes tract and rent same and collect the rents therefrom, and do other matters and things connected with the ownership of said property, which said power was duly accepted by said Connor and he proceeded to act and did act thereunder, a copy of said instrument is hereto attached and made a part of this plea.

That it recited in said power, among other things, as follows:

"That whereas, all that certain ten (10) leagues of land comprising (44,380) forty-four thousand two hundred and eighty acres, commonly, and generally and specially known as and called "the Paredes" lands out of and forming part of that larger grant
313 to J. S. de la Graza, called and known as the Espiritu Santo grant is held and owned in common by Charles S. Dana and Maria Grogan Dana, his wife, of Boston in the State of Massachusetts, and the heirs and devisees of Stephen Powers, late of Cameron county, Texas, deceased, said Powers heirs and devisees being Mrs. Agnes A. Browne, Mrs. Annette P. Hicks, Miss Frances E. Powers and Mrs. Kate M. Combe, now deceased; the said Powers heirs owning five-eighths (5/8) undivided of said Paredes ten leagues and the said Dana and wife owning three (3/8) eighths undivided thereof. And whereas said owners of said Paredes lands are desirous of and have agreed to employ George Connor of the said county of Cameron, Texas, to procure tenants for said lands and lease the same to them, and to collect the rents from all occupants and tenants upon said lands and to personally watch over and protect said lands from all trespass, waste and unlawful occupancy * * *,

Now, therefore, in consideration of the premises we, Charles S. Dana and Maria Grogan Dana his wife, of the city of Boston, in the State of Massachusetts acting by and through James B. Wells, their duly authorized agent and attorney in fact, and Annette P. Hicks (a widow) and Frances E. Powers, a *feme sole*, and Agnes A. Browne (*née* Powers) joined herein by James A. Brown, her husband and Charles B. Combe, M. D. executor of the will of Kate B. Combe, deceased, all of the said county of Cameron and State of Texas and owners of the said Paredes ten leagues of land, have nominated, made, constituted and appointed and by these presents do nominate, make constitute and appoint the said George Connor of the county

of Cameron and State of Texas our true and lawful agent and attorney in fact for us and for each of us and in our name and each of our names, places and steads, for the purposes and under the conditions and compensation and for the period hereinbefore set out and enunciated and enumerated."

And defendant further says that the agreement set up in complainant's bill and as an exhibit thereto as to the disposition to be made of the money to be collected from the United States Government for the Fort Brown reservation was signed by said Kate
314 M. Combe individually by *their* attorneys and also by B. O. Hicks and Annette P. Hicks individually by their attorneys, and by B. O. Hicks as guardian of the estate of Frances E. Powers, by his attorneys, and by Agnes A. Brown, formerly Powers, and her husband James A. Brown, individually by their attorneys, and that each of said parties were parties to said suit of Salinas *vs.* Kellogg. That whilst said Combe signed said agreement as executrix of said Powers, your defendant is informed and believes and charges it to be true that he had no authority under the law nor under the will of said Powers to bind said Powers estate by any such agreement and same did not and could not bind said estate and that it was for this reason that said devisees and legatees were made parties to said suit and said agreement. And defendant is informed and believes and charges it to be true, that thereafter said Combe as such executor of said Powers asserted no title to the fund to be collected under said agreement, did not aid or assist in the collection of same, paid none of the expenses of the collection of same, and treated all claim to said fund as growing out of the alleged ownership of said Paredes tract, and as the property of the said devisees and legatees under said will until the filing of this suit. And defendant says that said complainant now sues herein as such executor and the said devisees and legatees are not made parties hereto, nor are their legal representatives, and that said Combe is without power and authority in the premises to bring or prosecute this suit as such alleged executor, his trust having and said executorship having ended before the bringing of said suit; and no judgment rendered herein could or would bind the said legatees and devisees under said will, or could or would bind the estate of said Powers, or could or would bind any alleged interest of said Powers est*s*tate or said legatees or devisees in said alleged fund, so defendant is informed and believes and charges to be true.

And this defendant pleads the foregoing facts to the whole of said bill and demands judgment of this honorable court whether he ought to be compelled to make any answer to the said bill of
315 complaint and prays that he be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

FARRAR, JONAS, KRUTSCHNIT & GURLEY,
Solicitors and Counsel for said Defendant.

I hereby certify that I am one of the solicitors and of counsel for the above named defendant in the foregoing cause, and that in my opinion the foregoing plea is well founded in point of law.

EDGAR H. FARRAR,
Solicitor and Counsel for said Defendant.

Sept. 5th, 1898.

THE STATE OF NEW YORK, }
County of New York. }

James Stillman, being duly sworn, deposes and says that he is the defendant named in the foregoing plea; that he has read the same and knows the contents thereof and that the same is true in point of fact.

JAS. STILLMAN.

Sworn to and subscribed before me this first day of September, A. D. 1898.

[SEAL.] CORNELIUS A. LOUGHLIN,
Notary Public, New York County.

(Endorsed:) No. 21. Stillman's plea in abatement. Filed September 24th, 1898. D. H. Hart, clerk, by C. F. Tighlman, deputy.

316 In the U. S. Circuit — in and for the Western District of Texas, Sitting at Brownsville, Texas.

C. B. COMBE, Executor, }
vs. } No. 21. In Equity.
JAS. STILLMAN ET ALS. }

To the honorable judges of said court:

James Stillman, one of the defendants herein, reserving to himself the benefit of his plea to the jurisdiction herein filed, and still protesting that this honorable court is without any jurisdiction over him or over the subject matter of this cause, and for the purpose of adjusting his plea to the capacity of the complainant to have and maintain this bill to the averments of the amended bill herein filed by the complainant, (said amended bill having been filed since the said plea was filed and set down for argument), with leave of the court first obtained, avers and says that all the pertinent averments of the said amended bill, save and except those that attempt to make new parties are mere denials of the averments of the original plea or affirmation of facts *en pays* that might be admissible in evidence on replication to said plea, or scandalous charges against this defendant because he has set up the facts in said plea relative to the want of capacity of the complainant to sue and require no further pleading from this defendant further than the absolute denial of all such

charges of fraud, conspiracy and bad faith and the re-affirmance of the matters and things set up in said original plea, to-wit:—that long prior to the date of the filing of the bill herein the said C. B. Combe, as independent executor of the will of Stephen Powers, deceased, had become *functus officio*, by the discharge of all the trusts committed to him under said will, to-wit:—the payment of all debts and legacies and the delivery of all the property of said estate to the devisees thereof and the entire cessation on his part for many years past of the performance of any acts or functions as executor; that the share of the estate of Stephen Powers belonging to the complainant's deceased wife, Mrs. Kate M. Powers, had been partitioned between the complainant and his children, the devisees of said Mrs. Kate M. Powers and they had sent into possession thereof and the said estate settled and closed and the complainant as executor thereof discharged.

317 And further this defendant avers that the complainant herein, C. B. Combe, in his alleged capacity as independent executor of the will of Stephen Powers having been without authority to bring and maintain this bill cannot be given such authority by the joining with him as complainants some of the alleged heirs of one of the devisees of Stephen Powers' estate and the making of the rest of such devisees *parties* defe-dant as he has attempted to do in his amended bill herein filed and that such amended pleading does not better the complainant's case or affect the validity of the plea urged by this defendant to complai-ant's right to have and maintain this bill.

And defendant re-avers in detail against the said original and amended bill all the facts and allegations in his original plea herein set forth as fully as if they were specifically set forth herein and asks that — may be held and considered as so set out in full.

Wherefore, defendant prays that this plea may be maintained and the complainant's bill dismissed.

FARRAR, JONAS, KRUTSCHNELT AND GURLEY, *Sol'rs.*

EDGAR H. FARRAR, *Counsel.*

318 In the U. S. Circuit Court in and for the Western District of Texas, Sitting at Brownsville, Texas.

C. B. COMBE, Executor,
vs.
JAS. STILLMAN ET ALS. } No. 21. In Equity.

To the honorable judges of said court:

Thos. Carson, in his own right, and as administrator with the will annexed of M. J. Cavazos, deceas-, one of the defendants herein, reserving to himself the benefit of his plea to the jurisdiction herein filed, and still protesting that this honorable court is without any

jurisdiction over him or over the subject matter of this cause, and for the purpose of adjusting his plea to the capacity of the complainant to have and maintain this bill to the averments of the amended bill herein filed by the complainant, (said amended bill having been filed since the said plea was filed and set down for argument), with leave of the court first obtained, avers and says that all the pertinent averments of the said amended bill, save and except those that attempt to make new parties are mere denials of the averments of the original plea or affirmation of facts *en pays* that might be admissible in evidence on replication to said plea, or scandalous charges against this defendant because he has set up the facts in said plea relative to the want of capacity of the complainant to sue and require no further pleading from this defendant further than the absolute denial of all such charges of fraud, conspiracy and bad faith and the re-affirmance of the matters and things set up in said original plea, to-wit: that long prior to the date of the filing of the bill herein, the said C. B. Combe, as independent executor of the will of Stephen Powers, deceased had become *functus officio*, by the discharge of all the trusts committed to him under said will, to-wit: the payment of all debts and legacies and the delivery of all the property of said estate to the devisees thereof and the entire cessation on his part for many years past of the performance of any acts or functions as executor; that the share of the estate of Stephen Powers, belonging to the complainant's deceased wife, Mrs. Kate M. Powers, had been partitioned between the complainant and his children, the devisees of said Mrs. Kate M. Powers, and they
319 had been sent into possession thereof and the said estate settled and closed and the complainant as executor thereof discharged.

And further this defendant avers that the complainant herein, C. B. Combe, in his alleged capacity as independent executor of the will of Stephen Powers, having been without authority to bring and maintain this bill cannot be given such authority by the joining with him as complainants some of the alleged heirs of one of the devisees of Stephen Powers' estate and the making of the rest of such devisees *paeties* defendant as he has attempted to do in his amended bill herein filed and that such amended pleading does not better the complainant's case or affect the validity of the plea urged by this defendant to complainant's right to have and maintain this bill.

And defendant re-avers in detail against the said original and amended bill all the facts and allegations in his original plea herein set forth as fully as if they were specifically set forth herein and a-ks that they may be held and considered as so set out in full.

Wherefore, defendant prays that this plea may be maintained and the complainant's bill dismissed.

FRANKLIN, COBBS AND McGOWN,
Solis. for Thos. Carson, Individually and as Adm'r, etc., Est. Cavazos, Dec'd.

THOS. H. FRANKLIN, *Counsel.*

320 In U. S. Circuit Court in and for the Western District of Texas, Sitting at Brownsville.

C. B. COMBE, Executor,
vs.
JAS. STILLMAN ET ALS. } No. 21. In Equity.

In order to save delay, the court having given defendants Carson and Stillman leave to amend *his* plea, it is agreed that the affidavit of the defendants and the certificate of counsel to the said amended pleas be and the same are hereby waived and formal entry in the chancery order book setting the same down for argument as to their sufficiency to the bill and amended bill, be also waived and it is agreed that the same are to be heard as if they had been so formally set down in open court at San Antonio on Nov. 30th, 1898, and any order or judgment entered thereon at San Antonio shall have the same force and effect as if entered in term time at Brownsville.

C. L. BATES, *Counsel for Plaintiffs.*
FARRAR, JONAS, KRUSCHNELT AND GURLEY,
Solis. Jas. Stillman.
FRANKLIN, COBBS AND McGOWN,
Solis. for Thos. Carson, Individually and Adm'r Est. Cavazos.

(Endorsements:) No. 21. In Equity.—U. S. circuit court. 5th. circuit, western district of Texas,—at Brownsville. C. B. Combe, executor *vs.* Jas. Stillman, *et als.*—Amended pleas of Jas. Stillman and Thos. Carson, etc., and agreement of counsel with reference thereto.—Filed Nov. 30, 1898. D. H. Hart, clerk.—87—

321 *Motion to Require Defendants Stillman and Carson to Pay Funds to S. J. Brooks, Receiver.*

U. S. Circuit Court, Brownsville.

C. B. COMBE, Ex.,
v.
JAS. STILLMAN ET AL. } No. 21. In Equity.

Now come the plaintiffs and move the court to enter an order directing defendants Stillman and Carson to pay into the hands of S. J. Brooks, receiver, the $160,000.00 appropriated by the Government to pay for Fort Brown and collected by them.

C. L. BATES,
Counsel for Plaintiffs.

Endorsed: No. 21 In eq'ty. C. B. Combe, ex. *v.* Stillman, *et al.* Motion to require defendants Stillman and Carson to pay funds to S. J. Brooks, receiver. Filed Dec'r 1, 1898. D. H. Hart, clerk.

322 *Demurrer of Thomas Carson, Administrator, etc.*

In the U. S. Circuit Court, 5th Circuit, Western District of Texas, at Brownsville.

C. B. COMBE, Executor, ET AL.
vs.
JAS. STILLMAN ET AL.

To the honorable judges of said court:

The separate demurrer of James Carson, administrator with the will annexed of the estate of M. J. Cavazos, deceased, one of the defendants in this cause, to the original and amended bill of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, and in his own right; and to the bill of Chas. B. Combe, Jr., Fred. J. Combe, Frank K. Combe, Joseph K. Combe and Emil P. Combe, and for grounds of demurrer this defendant avers that reserving to himself the benefit of the many errors and insufficiencies of the plaintiffs' said original and amended bill and particularly reserving the benefit of his pleas heretofore filed to the jurisdiction of this honorable court and the capacity of said C. B. Combe executor to have and maintain his bill and amended bill, this defendant says for grounds of demurrer to said bill and amended bill:

1. That said bill and amended bill do not set out against this defendant any cause of equitable cognizance.

2. That the said bill does not deraign the alleged title of the said complainants or of the estate of Stephen Powers to one-half of the Fort Brown reservation in such manner and form that this defendant can traverse the same or take issue thereon.

3. That the said bill does not make necessary parties in this, towit:

323 *a.* That neither the heirs nor legal representatives of Mat Gerhard, deceased, one of the parties to the original suit and agreement set up in the bill, are made parties defendant to this proceeding and no sufficient reason or excuse for not making them parties is set up in the said bill.

b. That neither the heirs nor legal representatives of Leocardio Salinas, Antonio Salinas, Alejandro Salinas, Melchor Salinas and Higinio Salinas, all of whom were parties to the judgment and agreement set up in said bill and amended bill, are made parties to the said original bill and amended bill, nor are any sufficient reasons set up in the said bill why they have not been made parties defendant in this cause.

4. That there is a misjoinder of parties complainant and parties defendant in this cause in that part of the devisees of Kate M. Combe, deceased, to-wit: Charles B. Combe, Jr., Fred. J. Combe, Frank K.

Combe, Joseph K. Combe and Emil P. Combe, are made parties complainant and Mrs. Annette P. Hicks, Mrs. Frances E. Landrum and Mrs. Agnes Anastacia Browne, another part of the said devisees of Mrs. Kate M. Combe, deceased, are made defendants, said persons being neither necessary nor proper parties to this bill, either as parties complainant or as parties defendant, if the said C. B. Combe has the right as independent executor of the last will and testament of Stephen Powers, deceased, to have and maintain this bill.

Wherefore, for these reasons and grounds of demurrer and for many others apparent on the face of the said bill and amended bill, this defendant prays that the said original and amended bill may be dismissed with costs.

FRANKLIN, COBBS & McGOWN,
Solicitors for Thomas Carson, Ind. and as Adm'r, etc.

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Certificate of Counsel.

I hereby certify that in my opinion the foregoing demurrer is good in point of law.

THOS. H. FRANKLIN,
Counsel for Thos. Carson, Ind. and as Adm'r, etc.

Waiver of Affidavit.

The affidavit of Thos. Carson, ind. and as ex. to the foregoing demurrer is hereby specially waived.

C. L. BATES,
Counsel for Pla'ff.

In U. S. Circuit Court, 5th Circuit, Western District of Texas, at Brownsville.

C. B. COMBE, Executor, ET AL.
vs.
JAS. STILLMAN ET AL.

It is hereby agreed between counsel for the complainants and the counsel for the defendant Thos. Carson, administrator, etc., that the demurrer this day filed shall be immediately set down for hearing and trial and that the entry of a formal order in the chancery book setting down said demurrer for argument is hereby waived.

And it is further agreed that any order or judgment entered upon the said demurrer at San Antonio, where this hearing is to be held, shall have the same force and effect as if the same had been entered in open court at Brownsville.

C. L. BATES,
Counsel for Complainants.
THOS. H. FRANKLIN,
Counsel for Defendant Thos. Carson, Ind. and as Adm'r, etc.

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Endorsed: No. 21 Equity. C. B. Combe, executor *vs.* Jas. Stillman, *et al.* Demurrer of Thos. Carson, adm'r etc. Filed Dec. 1, 1898. D. H. Hart, clerk.

326 *Demurrer of Defendant James Stillman.*

In the U. S. Circuit Court, Fifth Circuit, Western District of Texas, at Brownsville.

C. B. COMBE, Executor, ET AL.
vs.
JAMES STILLMAN ET AL.

To the honorable judges of said court:

The separate demurrer of James Stillman, one of the defendants in this cause, to the original and amended bill of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, and in his own right; and to the bill of Chas. B. Combe, Jr., Fred. J. Combe, Frank K. Combe, Joseph K. Combe and Emil P. Combe, and for grounds of demurrer, this defendant avers that, reserving to himself the benefit of the many errors and insufficiencies in the plaintiffs' said original and amended bill and part-cularly reserving the benefit of his pleas heretofore filed to the jurisdiction of this honorable court and the capacity of the said C. B. Combe, executor to have and maintain his bill and amended bill, this defendant says for grounds of demurrer to said bill and amended bill:

1. That said bill and amended bill do not set out against this defendant any cause of equitable cognizance.

2. That the said bill does not deraign the alleged title of the said complainants or of the estate of Stephen Powers, to one-half of the Fort Brown reservation in such manner and form that this defendant can traverse the same or take issue thereon.

3. That the said bill does not make necessary parties in this towit:

327 *a.* That neither the heirs nor the legal representatives of Mat Gerhard, deceased, one of the parties to the original suit and agreement set up in the bill, are made parties defendant to this proceeding and no sufficient reason or excuse for not making them parties is set up in the said bill.

b. That neither the heirs nor legal representatives of Leocardio Salinas, Antonio Salinas, Melchor Salinas and Higinio Salinas, all of whom were parties to the judgment and agreement set up in said bill and amended bill, are made parties to the said original bill and amended bill, nor are any sufficient reasons set up in the said bill why they have not been made parties defendant in this cause.

4. That there is a misjoinder of parties complainant and parties defendant in this cause in that part of the devisees of Kate M. Combe,

deceased, to-wit, Charles B. Combe, Jr., Fred. J. Combe, Frank K. Combe, Joseph K. Combe and Emil P. Combe are made parties complainant, and Mrs. Annette P. Hicks, Mrs. Frances E. Landrum and Mrs. Agnes Anastacia Brown, another part of the said devisees of Mrs. Kate M. Combe, deceased, are made defendants, said persons being neither necessary nor proper parties to this bill, either as parties complainant or as parties defendant if the said C. B. Combe has the right as independent executor of the last will and testament of Stephen Powers, deceased, to have and maintain this bill.

Wherefore, for these reasons and grounds of demurrer and for many others apparent on the face of the said bill and amended bill, this defendant prays that the said original and amended bill may be dismissed with costs.

FARRAR, JONAS, KRUTSCHNITT & GURLEY, *Sol'rs.*

EDGAR H. FARRAR, *Of Counsel.*

Certificate of Counsel.

I hereby certify that in my opinion the foregoing demurrer
328 is good in point of law.

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Waiver of Affidavit.

The affidavit of James Stillman to the foregoing demurrer is hereby specially waived.

C. L. BATES,
Counsel for Plaintiff.

In U. S. Circuit Court, Fifth Circuit, Western District of Texas, at Brownsville.

C. B. COMBE, Executor, ET AL.
vs.
JAS. STILLMAN ET AL.

It is hereby agreed between counsel for the complainants and the counsel for the defendant Jas. Stillman, that the demurrer this day filed shall be immediately set down for hearing and trial and that the entry of a formal order in the chancery book setting down said demurrer for argument is hereby waived.

And it is further agreed that any order or judgment entered upon the said demurrer at San Antonio, where this hearing is to be held, shall have the same force and effect as if the same had been entered in open court at Brownsville.

C. L. BATES, *Counsel for Complainants.*
FARRAR, JONAS, KRUTSCHNITT & GURLEY,
Counsel for Defendant James Stillman.

Endorsed: No. 21 Equity. C. B. Combe, ex'r, *et al.*, *vs.* Jas. Stillman, *et al.* Demurrer of defendant James Stillman. Filed Dec. 1, 1898 D. H. Hart clerk.

329 In United States Circuit Court in and for the Western District of Texas, at San Antonio Sitting.

C. B. COMBE, Executor,
vs.
JAMES STILLMAN ET AL.

Now comes Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, and individually, and replying to the rule to show cause why he should not be required to pay a certain alleged fund into court and be punished for contempt for failing so to do, and limiting his appearance to this hearing and reserving and saving all right and benefit of all demurrers, exceptions, pleas and other pleadings heretofore filed herein, and without waiving any of said demurrers, exceptions, pleas or pleadings, but specially insisting upon same, and reserving also the benefit to file hereafter all necessary and proper pleadings in this cause, says that the court ought not to hear and grant an order for the payment by him, either individually or as executor, into the custody of this court any of the alleged fund described in plaintiff's petition, and ought not to hold this defendant, either individually or as administrator aforesaid, in contempt for having failed to pay said fund into this court, for this:

That no part whatever of the one hundred and sixty thousand dollars referred to in the bill of complaint herein and the rule and motion herein has ever at any time been received by this defendant, either individually or as administrator of the estate of Maria Josefa Cavazos, deceased, or held under his control or direction or in his possession. That for nearly two years he attended in the city of Washington attempting to collect said sum from the Government of the United States, but that he did not succeed in so doing, and being unable to remain longer in Washington he finally executed a power of attorney to one John
330 A. Garver, of New York city, a member of the firm of Shearman & Sterling, attorneys in the city of New York, authorizing him to take such steps as might be necessary to collect said fund. That he could not alone either collect or receipt to the United States for said sum named, because the money was payable to his co-defendant Stillman and this defendant as administrator aforesaid jointly, and the said John A. Garver was at the same time acting as attorney in fact for said Stillman in the premises. That said one hundred and sixty thousand dollars this defendant is informed and believes, was finally collected by the said John A. Garver, attorney as aforesaid, but not until some ten years after the act of Congress of

March — 1885, making an appropriation for the payment of said one hundred and sixty thousand dollars. That in the meantime the said arbitration agreement had become ineffective by reason of the death of one of the arbitrators, Gen. Waul, and the refusal to act of one of the other arbi-rators, Judge Culberson; and the parties authorized to name other arbitrators by said agreement had failed so to do, and this defendant and said James Stillman, under the terms of said arbitration agreement, were neither authorized to appoint substitute arbitrators. That it therefore became necessary for this defendant and his co-defendant Stillman, this defendant acting as administrator as aforesaid, to continue their efforts to collect said fund; and that this defendant living a great distance from Washington was, as heretofore stated, unable to constantly attend in said city to push the collection of said fund and made the appointment of said John A. Garver as his attorney as aforesaid. That, as hereinbefore stated, no portion of said fund when collected, was ever paid over to this defendant by the said John A. Garver or by the said James Stillman, and that he has endeavored to obtain a settlement with the said Garver and a distribution of said fund and has visited the city of New York for that purpose and remained there some time, but that owing to the litigation brought by H. E. Woodhouse and others, he was wholly unable to do so and was unable to obtain from said Garver any possession, control or disposition
331 of the said fund, or any part of it, and has not been able to do so since without any fault or omission on his part in the premises.

That he is informed and verily believes it to be true that neither the complainant herein or the said Stephen Powers, or any of the heirs, devisees or legatees have ever had any title to any portion of the said fund, and that his co-defendant Stillman has never recognized, nor has this defendant, any title in the said above named parties to any portion of said fund.

Further answering, he says that it is shown by the record herein that out of said fund of one hundred and sixty thousand dollars, $8,10L.02 was paid out for taxes upon said Fort Brown property, and that said payment was made as a necessary condition precedent for obtaining the money appropriated by the Government. That under the agreement contained in the record, twenty thousand dollars or more was to be paid out for expenses, and this defendant is informed and believes that by a subsequent agreement between all parties to the original agreement, a further expenditure of twenty-five thousand dollars was authorized to be made as expenses necessarily incident upon the collection of said fund, and both sums were actually paid out by said Stillman, that other and additional expenses were incurred and paid out in connection with the collection of said fund, and that the actual amount, after the deduction of said expenses, collected by the said John A. Garver, was the sum of one hundred and six thousand dollars, and that the title of the said Stillman and this defendant, as administrator aforesaid, to one-half of said balance

has never been contested as far as this defendant is aware by anyone, and that the only portion of said fund, so this defendant is informed and believes, that is really in dispute is one-half of the said balance, towit: the sum of about fifty-three thousand dollars, and that therefore this defendant should not in any event be required to pay into the custody of this court or to pay over to this receiver any greater sum than the said sum of fifty-three thousand
332 dollars.

But this defendant further says that as is hereinbefore fully shown, he is utterly unable to get possession of said fund or to control it in any manner whatsoever, and that his failure to pay same into the custody of this court is not due to any intention or purpose to disobey any of the orders of this court, but because of his absolute inability to make any such payment. That he would have no right to demand of the said Garver or the said Stillman, any larger amount of said money than was properly due the estate of Maria Josefa Cavazos, deceased, and that in order to secure said sum, his only proceeding, as he is informed and believes, is a suit against the said Garver or the said Stillman, both of whom are resident citizens of the city, county and State of New York, and which said suit would, therefore, have to be brought by him in said State of New York; that in addition to this, as he is informed and believes to be true, he, as an administrator appointed under the courts of Texas, could not bring such suit in the courts of New York; and that in order for him to have any standing in the courts of said State, for the purpose of suing for the recovery of any portion of the said fund belonging to the said estate, he would have to take out letters of administration over the said estate in the said State of New York. He further says that he is informed and believes, and charges it to be true, that there are unsettled differences between the said James Stillman and the said estate of Maria Josefa Cavazos deceased, growing out of a number of years of business transactions, all of which differences would have to be settled before it could be ascertained definitely whether the said estate of Maria Josefa Cavazos was entitled to any portion of said fund as against the said James Stillman.

He further avers that he could not get the process out of this court for the purpose of reducing to the custody of this court said fund because he is informed and believes and charges it to be
333 true that this court is without jurisdiction to issue such process, and that therefore it would be a breach of his trust as administrator as aforesaid to aid in reducing into the custody of this court and placing in the hands of its receiver said fund or any portion thereof when this court would not have jurisdiction to administer same and its entire proceedings in that regard might be null and void and all actions of its receiver with reference to any of said fund equally null and void.

Further answering this defendant says that he is informed and believes and charges it to be true that complainant herein is without authority to bring this suit and without interest in the subject mat-

ter hereof, for this: Under the will of Stephen Powers all his property was disposed of by specific devises, and B. O. Hicks and complainant appointed joint executors, and both qualified as such. That said will was probated on or about the 20th day of March, 1882, and that since then all of the debts of said estate have been paid off by said executors and all of the property of said estate partitioned among the legatees and devisees under said will as will more fully appear by copy of partition hereto attached and made a part hereof. That all necessity for further administration of said estate had therefore ceased at and before the institution of this suit and all of the property of said decedent had become absolutely vested in said legatees and devisees and passed out of and beyond the control and management of either of said executors.

Wherefore, defendant say- that he cannot pay said fund or any portion of same into court or reduce same to his possession and that — has done nought in contempt of this court; that he has complied as fully as he could with all orders and decrees of this court, and he asks to be hence discharged with his costs.

FRANKLIN, COBBS & McGOWN,
Solicitors for said Thos. Carson Individually and as Adm'r as Aforesaid.

THOS. H. FRANKLIN, *Of Counsel.*

334 THE STATE OF TEXAS, }
County of Cameron. }

Before me, the undersigned authority, personally appeared Thomas Carson as administrator of the estate of Maria Josefa Cavazos, deceased, and individually, and being duly sworn says that he has read the foregoing answer and understands same, and that the same is true in substance and in fact where the matters and things therein stated are stated of his own knowledge and where the matters and things therein stated are stated upon information and belief, he believes the same to be true.

THOMAS CARSON,
Administrator of the Estate of Maria Josefa Cavazos, Deceased.

Sworn to and subscribed before me by Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, and individually, on this the 10th day of December, A. D. 1898.

JOSEPH WEBB,
[SEAL.] *Clerk County Court, Cameron County, Texas.*

Endorsed: No. 21 Equity. C. B. Combe, ex. *et al. vs.* James Stillman *et al.* Answer of Thomas Carson to rule. Filed Dec'r 20, 1898. D. H. Hart, clerk. By A. Grosenbacher, deputy.

335 *Return of James Stillman to Rule to Show Cause Why Fund Should Not Be Paid to Receiver.*

United States Circuit Court, Western District of Texas.

C. B. COMBE, as Executor of Stephen Powers, Dec'd,
versus
JAMES STILLMAN ET AL.
No. 21. In Equity.

Now comes the defendant, James Stillman, through his undersigned solicitors, and for return to the rule herein to show cause why the fund of $160,000 mentioned in the bill of complaint should not be paid to the receiver heretofore appointed herein, says:

I. The court ought not to grant the motion, because it appears upon the face of the original and alleged amended bills of complaint herein:—

1. That this court has no jurisdiction of this cause, because there is no diversity of citizenship, the complainant herein being a resident citizen of Texas at the time of filing his bill and certain of the defendants being resident citizens of the same State at the said time: nor has this court any jurisdiction of this defendant, a resident and citizen of New York, nor any power to subject him to its process, nor has any valid process ever issued in this cause against him, nor can it ever under the U. S. statutes validly issue hereafter; nor has he ever waived his privilege under said statutes, or in any manner submitted himself to the process of this court.

2. That this suit is not dependent, or ancillary to an alleged action at law formerly pending in this court, entitled "Heirs of Miguel Salinas *versus* William L. Kellogg, No. 248," or to any other action, suit or proceeding; but that said action at law has heretofore been finally disposed of and all matters at issue therein finally adjudicated.

3. That the alleged agreement to arbitrate, set out in complainant's bill, was a separate, external and independent agreement between certain parties to said suit at law, not a part of the record in said action at law; and complainant's suit for an alleged breach of said agreement has no connection with and is in nowise dependent upon nor ancillary to said action at law.

336 II. The act of Congress passed on March 3, 1885, appropriating the sum of $160,000 for the purchase of the Fort Brown military reservation and as payment for the use and occupation of the premises by the Government since the year 1846, was not passed until after repeated efforts had been made to secure payment from the Government for the use and occupation of the property and for the fee in case it desired to purchase the property, and not until after continuous efforts, extending over several years, had been made to

prevail upon Congress to pass such an act. The appropriation, as made in March, 1885, was not actually paid until more than ten years later, namely, in April, 1895. The efforts to obtain the payment of this appropriation were constant and urgent during the entire decade and involved very extensive disbursements on the part of myself and the defendant Carson and our attorneys, in attending at Washington before the committee of the House and Senate and before the various executive departments.

During the entire period prior to the passage of the appropriation act of 1885, and during the ten years following, when such a large amount of time and expense was devoted to the effort of collecting the appropriation, neither the plaintiff nor any other party to this suit, so far as I know, ever expended one dollar towards securing the appropriation or towards obtaining its payment; and neither the plaintiff nor any other party to this suit, with the exception of the defendant Carson, ever bestowed the slightest time or effort towards obtaining the said appropriation or towards collecting it. On the contrary, the appropriation would almost certainly have been paid within a year after it was made, had it not been for the obstructive tactics employed on behalf of this complainant and the other parties to this suit.

III. In March, 1886, the complainant and the defendants, other than the defendant Carson, were represented in Washington, D. C., by their attorney, James B. Wells, Esq. At that time, Mr. Wells offered to withdraw all opposition to the payment of the appropriation, so far as his clients were concerned, upon the payment of $30,000. I was so familiar with the title to the Fort Brown property and was so thoroughly convinced that none of the said parties had any interest of any kind in the property, that I refused to make this payment. I did, however, offer, if they would withdraw their opposition and unite in the execution of quitclaim deeds, so as to allow the appropriation to be paid, to deposit the sum in a
337 responsible banking-house and to determine the question of the rights and interests in the fund by arbitration proceedings or by a suit instituted for that purpose. This offer was declined; and before the judgment of 1887, vesting the title in myself and in Thomas Carson, as administrator, had been obtained, the administration in power at the time of the passage of the act had changed and a new Secretary of War, unfamiliar with the previous history and prejudiced against the amount appropriated, had taken office.

IV. Exhibit C annexed to the original bill of complaint herein shows that the city of Brownsville and the Fort Brown reservation are embraced in the middle third of the Espiritu Santo grant made by the Spanish Government to José Salvador de la Garza in 1781, and that the title was subsequently vested in Francesca Cavazos, who, in 1817, conveyed to José Miguel Paredes ten sitios or square leagues off the eastern part of said middle third, and that the defendant Marie Grogan Dana and the heirs and devisees of the late Stephen Powers, deceased, owned the said Paredes tract; while the western

portion of the said middle third became the property of Maria Josefa Cavazos. Maria Josefa Cavazos conveyed one-half of her interest in the said premises to my father, the late Charles Stillman, by deed dated March 25, 1875; and, upon the death of my father, I succeeded to his one-half interest, under his will, and by due conveyance from his devisees. The other half interest passed under the will of the said Maria Josefa Cavazos, and, as found by the Attorney General of the United States in his opinion of January 16, 1886, is now represented by the defendant Thomas Carson, as administrator with the will annexed of the estate of the said Maria Josefa Cavazos.

V. Whether the complainant and the other parties hereto claiming to represent the ownership of the said Paredes tract are entitled to any portion of the said appropriation of $160,000, depends solely upon whether any part of the Fort Brown reservation is included in the said Paredes tract. From the facts and evidence in my possession, I am thoroughly convinced and am advised by my counsel that the westerly line of the said Paredes tract falls at a point considerably to the east of the easterly boundary line of the Fort Brown reservation, without regard to whether the true or the magnetic meridian is taken: thus entirely excluding that reservation from the Paredes tract; and I am also informed and believe that this has been substantially determined in legal proceedings had in the
338 State courts of Texas.

VI. The title of the said Maria Josefa Cavazos to the westerly portion of the Paredes tract, including the city of Brownsville, was also definitely determined by a decision of the United States Supreme Court made in 1879 and reported as Brownsville *versus* Cavazos, 100 U. S., 138.

VII. There is a minor controversy involved as to a small tract alleged to be included in the Fort Brown reservation, amounting to 21.48 acres. The acreage is expressly conceded in Exhibit D annexed to the bill of complaint, being the agreement of July 13, 1887, therein referred to. This tract has always been claimed by the defendant Woodhouse, by Mat Gerhard and others; but I am advised and believe that they have no title whatever to any portion of the said tract and the complainant practically concedes that, so far as this small and doubtful claim is concerned, it is of no importance, as the heirs and devisees of the deceased owners have not been made parties to this suit, and the complainant has no interest in this particular claim.

VIII. The only substantial controversy in the present suit is, therefore, as above stated, as to where the dividing line between the Paredes tract and the tract formerly owned by Maria Josefa Cavazos falls.

IX. The assertion made in the original bill of complaint and repeated in the so-called amended bill, that the estate of Stephen Powers, represented by the complainant, is entitled to one-half of the said appropriation of $160,000 could not possibly be true, unless a conveyance of the entire estate was made to Stephen Powers,

jointly with some other person, which is not pretended, or unless the dividing line between the said Paredes tract and the other portion of the middle third of the Espiritu Santo grant cut the Fort Brown reservation, consisting of 353 acres, into exactly two equal parts. This is absolutely impossible, in view of the fact that the reservation lies on the bends and windings of the Rio Grande and is irregular in its general out-line. In the so-called amended bill, in paragraph numbered 5 thereof, the complainant repeats the statement that the Powers estate is entitled to one-half of the entire $160,000, although in the preceding paragraph (No. 4), he had expressly admitted that the payment of $8,101.02 out of the appropriation was properly made and that the defendant Carson and myself were entitled to credit for the same. Moreover, even if the division line did divide the Fort Brown reservation into precisely two equal parts, the complainant, in spite of his
339 averment that he, as representing the Powers estate, is entitled to one-half of the reservation, expressly shows by his allegations and by the exhibits forming part of the original bill, and he also shows by the so-called amended bill, that he is not entitled to such one-half. In the original bill, for instance, in paragraph VIII thereof, it is expressly alleged that, in the action in law in which judgment vesting the title in the defendant Carson and myself was entered in July, 1887, a joint answer was filed by the representatives of the estate of Stephen Powers, deceased, and Charles S. Dana and his wife, Marie Grogan Dana, in and by which they alleged a claim that the said estate of Stephen Powers and Marie Grogan Dana owned an undivided half of said Fort Brown reservation. This averment was made in paragraph VII of the bill; and it must, therefore, be held to supersede the averment in paragraph V thereof, that "Stephen Powers in his life-time, for a valuable consideration, acquired a perfect and valid, legal and equitable title in fee simple to an undivided one-half of said land."

Moreover, the averment in paragraph VII of the bill is borne out by a copy of the joint answer filed by the said Powers estate and Marie Grogan Dana, now forming a part of the records of this court and appearing at page 95 of the printed transcript of record on appeal to the United States circuit court of appeals, that answer containing the allegation that, "at the time of his death, the said Stephen Powers was and his said heirs at this present time jointly with the said Marie Grogan Dana, are the owners of an undivided half of the premises sued for," and also containing the further allegation that the "said Marie Grogan Dana and said heirs of Stephen Powers, deceased, are now the owners in fee simple of said eatsern part of said middle third." Furthermore, in the so-called amended bill of complaint, in that portion thereof marked 5, the allegation is made that the estate of Stephen Powers, deceased, and those claiming to represent it "owned and held, as tenants in common with defendant Mrs. Marie Grogan Dana" the said Paredes tract, including "a part of the city of Brownsville." The same fact

of joint ownership appears from Exhibit D annexed to the bill of complaint, being the agreement of July 13, 1887, upon which this suit is based, which contains this clause:

"Sixth. It is mutually agreed that the title and interest of so much, if any, of the said Paredes tract of land as is in and forms part of the said Garrison property of Fort Brown is held and owned by Mrs. Marie Grogan Dana and Charles Sana, of Boston, her
340 husband, and by the heirs of Stephen Powers, late of Brownsville, deceased, and shall not be disputed; the only question as to the Paredes tract to be submitted to and determined by the said arbitrators being whether any portion thereof is within the Fort Brown reservation and, if so, how much thereof and its value."

X. In view of the facts expressly appearing in the bill of complaint and in the so-called amended bill, the claim made by the complainant that he is entitled to one-half of the fund is manifestly unfounded and absurd and is somewhat on a par with the allegation above referred to contained in the so-called amended bill, that some portion of the city of Brownsville was contained within the Paredes tract: the Supreme Court of the United States having years ago decided to the contrary; and if the Paredes tract did cover any portion of the city of Brownsville, it would have to cover the entire Fort Brown reservation, as the city of Brownsville lies west of the reservation.

XI. Paragraph VI of the bill of complaint sets forth the said appropriation act of March 3, 1885, in full and shows that the sum of $160,000 appropriated was not merely for the purpose of acquiring title to the fee of the Fort Brown reservation, but was also "to pay and extinguish all claims for the use and occupancy of said reservation by the United States." The same paragraph shows and it is a historical fact that the United States has been in possession of the Fort Brown reservation since the year 1846, when the property was entered upon by the United States troops under General Taylor, during the Mexican war. When, therefore, the act of March 3, 1885, was passed, the amount appropriated included the value of the use and occupation of the property for a period of thirty-nine years. Neither the original bill of complaint nor the so-called amended bill claims that the said Stephen Powers had acquired any interest in the premises at any considerable time before his death; but it merely appears that he died seized of such interest in 1882. I am informed and believe that it was only a short time prior to his death that he acquired an interest in the said Paredes tract; and I am also informed and believe that his claim is merely based upon a conveyance of the fee and that no deed or assignmeny of any interest in the claim against the Government for use and occupation was ever made to him or any of his legal representatives or devisees. Even, therefore, if the complainant, as representing the said estate, were entitled to any portion of the proceeds for the fee of Fort Brown, it is not shown that he is entitled to any portion of the appropriation allowed for the use and occupation. As a matter of fact, the greater part

of the appropriation was made for the use and occupation.
341 I am informed and believe that the amount appropriated was based on $50,000 for the fee, which I believe is as much as the land is worth, and $110,000 for use and occupation; and this is in accordance with sums paid by the Government for the use of other property in Texas. Quartermaster General Holabird, for instance, who was very familiar with the property, in a letter written by him on April 22, 1884, to the House Committee on Appropriations, stated that the estimates of the value of the fee varied from $25,000 to $75,000; and in the same letter, he stated that in his opinion, "the rental value of the site of Fort Brown from 1846 to 1866 was at least equal to $2,500 per annum," and that "there is no question in my (his) mind that from 1866 to date the value of the rental, considered relatively to prices paid for similar property in the State of Texas, was and is $3,600 per annum." I am informed and believe that Congress passed an act on March 3, 1873, authorizing the purchase of certain sites, for military purposes, in Texas; that a board of officers, of which Quartermaster General Holabird was the chairman, convened and reported in favor of the purchase of these sites, placing a valuation on each, and that among them was Fort Brown, which was valued at $25,000; that the same board valued Fort Davis, in Texas, at $9,000, and that an annual rental of $900 was paid by the Government for that fort; that Fort Duncan, in Texas, was appraised at $10,920, and that a rental for it was paid from March 1849, to December 1855, amounting to $1400 a year, and from January 1856, to September 1858, of $1560 a year, and from 1876 to 1880 a rental of $2400, from 1880 to 1882 of $2,700, and from 1882 to 1883 of $3,600.

XII. On the facts as they appear from the complainant's own papers, I am advised and believe that the complaint does not show in any event an interest to more than one-fourth of the amount of the appropriation and that the question for the court to determine upon the present motion, if it should decide that the complainant is entitled to any security pending the determination of his so-called claim, is how much of the fund is now left with reference to which an adjudication could be made in the present suit.

XIII. In paragraph XII of the original bill of complaint, it was expressly alleged that the fund, "less the $20,000 to be paid to agents at Washington," should be deposited to the credit of the arbitrators in the bank of Ball, Hutchings and Co. In para-
342 graph 4 of the so-called amended bill, however, the complainant seeks to avoid this admission by stating that it was inadvertently made and that upon a further reading of the said agreement they find that the $20,000 payable to Washington agents was to be paid by the arbitrators, and not by the defendants Carson and myself, and that the arbitrators had some discretion as to passing upon the propriety of such payment. But it expressly appears by the said agreement (Exhibit D, annexed to the bill of complaint), that the said sum of $20,000 "so due as aforesaid, at Washington,

be immediately paid from said fund by said arbitrators." In other words, the contemplated arbitrators were to have no discretion whatever, but were to make the payment at once, the fact that it was due being expressly conceded. The bill of complaint shows that prior to the collection of the appropriation, *Mr. Ballinger, one of the* arbitrators, had died and Mr. Culberson had declined to act and no arbitrators had been appointed to take their place. When, therefore, the appropriation was paid, it was not possible for Mr. Carson and myself to pay any sum to the arbitrators mentioned in the said agreement, and even if they had all been living and had consented to act, the payment to them of the $20,000 would have been merely a roundabout way of paying the claim which was admitted to be due. That claim was originally incurred for services connected with obtaining the appropriation. Agents skilled in matters relating to the executive and legislative departments in Washington had necessarily to be employed to confer with the heads of departments and to inform members of Congress of the merits of the claim Long before any claim of any kind was made by this complainant, or any of the other parties hereto, that he had any interest whatever in the Fort Brown reservation, I entered into a contract, by which I agreed to pay a certain percentage to William Brady, Esq., for services in connection with obtaining recognition of the claim from the Government. Although I contracted with him that his fees should be paid only out of the amount collected, he subsequently sued me in the United States circuit court for the southern district of New York, for the sum of $20,000, together with an additional sum which he claimed to be due for services rendered in connection with the appropriation. That suit was contested and was finally settled by an agreement, by which it was provided that he should receive out of the appropriation, when collected, $20,000, in addition to $1500, previously paid to him and $500 paid to him at the time of the execution of the agreement. The propriety of this agreement with Mr. Brady was never questioned by James B. Wells, Esq., who represented the complainant
343 and other claimants adverse to myself. General J. Hale Sypher, of Washington, D. C., claimed to have assisted Mr. Brady in procuring the appropriation and also claimed that Mr. Brady had agreed to allow him $5000, out of the $20,000 for his services. This Mr. Brady denied and General Sypher then insisted that the owners of the property should recognize his claim for services. I declined to do this for a long time; but Mr. Wells, representing the Powers estate and others, did enter into an agreement, a copy of which is hereto annexed, marked Exhibit A, providing for the payment of the said sum of $5,000, to General Sypher out of any amount which might be payable to his clients, if the same were not conceded by Mr. Brady from his $20,000; and I am informed and believe that Mr. Wells strongly recommended to my attorneys that I should allow this claim of General Sypher. The latter subsequently performed many services in connection with the efforts

made by my attorneys to collect the appropriation, and long before the appropriation was finally paid, I withdrew my opposition to his claim, in the event that the money were actually paid, and the said sum of $5,000 was actually paid to the said Sypher in May, 1895.

XIV. On October 19, 1898, an agreement was executed between various persons claiming an interest in the said appropriation, including this complainant and the devisees under the will of Stephen Powers, whom he now claims to represent, a copy of which agreement is hereto annexed, marked Exhibit "B," providing for the expenditure of the further sum of $25,000 in collecting the said appropriation. That agreement was executed at a time when it was supposed that the appropriation could be collected within a short period, whereas it was not in fact actually collected until nearly six years later, and after the expenditure of a vast amount of time and much additional money in the effort to collect the same: of all of which facts this complainant, either personally or through his attorney, the said James B. Wells, was well informed; and out of the amount of the said appropriation collected by me I actually paid, on account of such expenses and disbursements, in addition to the sums hereinbefore mentioned, aggregating $33,101.02, much more than the said $25,000. A credit for this sum the complainant, in his so-called amended bill, now seeks to disregard, not by any statement that it was not actually and necessarily paid by me, but on the ground that the propriety of the payment should have been passed upon by arbitrators not in existence for that purpose;
344 and I observe, in the concluding sentence of paragraph 4, of the so-called amended bill, that the complainant now contends that the entire fund, exclusive of the taxes, should be paid into court, and that if I have, "in fact, made any disbursements out of said fund, except for the taxes aforesaid, such disbursements were knowingly and wilfully made in violation of his (my) duty as a trustee and the agreement of the parties." In other words, the complainant now comes into a court of equity seeking to hold me, as a trustee of a fund, and asserting that any disbursements made by me in creating or preserving the fund should not be allowed to me as trustee. This remarkable claim is made, too, in face of an agreement made eight years before the appropriation was collected, which expressly conceded $20,000 for expenses previously incurred, and in spite of the fact that two years later a supplemental agreement (Exhibit "B" hereto annexed) was entered into on behalf of the complainant, conceding that the amount allowed for former disbursements and expenses had not been sufficient, and that $25,000 more should be allowed, and this in the expectation that the appropriation would be very shortly paid; whereas it was not in fact paid until about six years thereafter.

XV. As I have heretofore stated, neither the complainant nor any one representing the estate of Stephen Powers, deceased, ever contributed in any way, either by money or services, towards obtaining the appropriation or towards collecting it subsequently; and had it

not been for the refusal of the complainants to arbitrate their claims at the outset, a great portion of the additional expense might have been avoided. There was scarcely a session of Congress, subsequent to the passage of the act of March, 1885, making this appropriation, when an attempt was not made to repeal the act or reduce the appropriation. Many times I went to Washington, personally, to endeavor to secure the payment of the appropriation, and the defendant Carson was in Washington, for the same purpose, for more than a year. There was a very extended investigation by a committee of the House, appointed by the Fiftieth Congress, at which numerous witnesses were examined in regard to the value of Fort Brown and the amount which should reasonably be allowed for its use and occupation. In the course of that investigation, Mr. James R. Cox, one of my attorneys, was in Washington for a large portion of that entire winter. That committee subsequently made a report recommending that only $50,000 should be allowed, instead of the $160,000 that had been given. Subsequent committees of the
345 House, at subsequent sessions, made similar reports; and the matter also came up before the Military Committee of the Senate, where much evidence was introduced, and where I was again represented by counsel. Numerous trips to Washington were made by my counsel, for the purpose of seeing the Secretary of War, the Attorney General, the Secretary of State, the Comptroller of the Treasury, and other executive officers, in relation to this fund. Counsel were also employed there to commence a suit in the Court of Claims; and such suit was actually commenced in the year 1891, for the purpose of avoiding the running of the statute of limitations. Other suits were brought and other attacks made against the fund by other persons, claiming to have assisted in procuring the appropriation; and extensive disbursements were necessarily incurred in all of these matters; all of which I personally advanced from time to time.

XVI. Neither the defendant Carson nor myself has ever received anything for our services in obtaining and collecting the said appropriation; and if we are held to be trustees of the fund, I am advised and believe that we are entitled to reasonable compensation out of the fund, for our services, and are also entitled to all reasonable payments and disbursements made by us in connection with any trust claimed to exist.

XVII. No part of the said fund of $160,000 has ever come into the possession of the defendant Carson; but the entire fund, after the payments made out of it as above mentioned, is now held by me personally.

XVIII. The complainant does not, in his bill of complaint, allege that I am not thoroughly able, financially, to pay any sum to which he may show himself entitled, as the result of this suit; and he practically concedes this in his so-called amended bill. As a matter of fact, I am abundantly able, financially, to respond to *my*

judgment which may be rendered in this suit in favor of the complainant, or any of the other parties hereto.

Wherefore, defendant prays that the said rule may be discharged.

FARRAR, JONAS, KRUTSCHNULT AND GURLEY, *Sol'rs.*

EDGAR H. FARRAR, *Counsel.*

346 UNITED STATES OF AMERICA, }
Southern District of New York. }

James Stillman, being duly sworn, deposes and says that he has read the foregoing return and knows the contents thereof, and that the same is true to his own knowledge except as to those matters which are therein stated to be upon information and belief and as to those matters he believes it to be true.

JAS. STILLMAN.

Subscribed and sworn to before me this tenth day of December, 1898.

[L. S.] CORNELIUS LOUGHLIN,
Notary Public, New York County.

347 EXHIBIT A.

This contract made and entered into by and between J. B. Wells, attorney at law, of the city of Brownsville, State of Texas, of the first part, and E. N. Hill, attorney at law of the city of Washington, District of Columbia, of the second part, witnesseth:—That the said party of the first part is the agent and attorney in fact for the collection of certain moneys due and appropriated by the Government of the United States to the heirs and assigns of Paredes and Salinas, residents of the State of Texas, which agency and attorneyship is evidenced by certain powers of attorney now on file in the said case, and the said party of the first part, desiring to secure the services of the said Hill and his associates in securing the payment of said moneys, agrees for himself and his principals to pay to the said party of the second part ten per cent. of any and all sums that may be paid to him as agent for the above named parties out of the appropriation now made to pay for the Fort Brown reservation, the said party of the second part and his associates agreeing to give their best professional services to secure the payment of the moneys claimed at the earliest possible day, and to do all acts necessary and proper to be done by attorneys in said case.

The said party of the first part further agrees that in the event of the collection of the money appropriated to pay for the Fort Brown reservation that he will protect Gen. J. Hale Sypher, in securing the

fee of five thousand dollars, for services secured by said Sypher in the passage of said appropriation, it being further agreed that should the said five thousand dollars fee be paid entirely by said Wells, then the same is to be deducted from the said ten per cent.

Signed this 19th day of January, 1886, in the city of Washington, District of Columbia.

JAMES B. WELLS, JR.,
Agent and Attorney in Fact for Assigns of Paredes and the Heirs and Assigns of Miguel Salinas.

348 THE STATE OF TEXAS, }
County of Cameron. }

Whereas, on the thirteenth (13th) day of July, A. D., 1887, we, the undersigned, James Stillman, Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, Mrs. Charlotte Miller, Henry Miller, B. O. Hicks and C. B. Combe, executors of the will of Stephen Powers, deceased, B. O. Hicks, guardian of the estate of Frances E. Powers, Kate M. Combe and C. B. Combe, B. O. Hicks and Annette P. Hicks, Mat Gerhard, Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Charles S. Dana and Marie Grogan Dana, Francisco Yturria, Juan Salinas, H. E. Woodhouse, Agnes A. Browne and James A. Browne, as owners and claimants of the military reservation of Fort Brown at Brownsville, Cameron county, Texas, did enter into an agreement for the purpose of facilitating the collection from the United States Government and the distribution among the true owners thereof, of the appropriation of one hundred and sixty thousand dollars, ($160,000) made by the said Government for the purchase of the said Fort Brown military reservation, a copy of which agreement is hereto attached and made part hereof for greater certainty.

And *hw*ereas, in and as a part of said agreement it is stipulated, that the sum of twenty thousand dollars, ($20,000) will upon the collection of said appropriation be due and owing to certain agents at Washington, who assisted in procuring the said appropriation, who must first be paid from said fund, when received, and that the said sum shall be paid by the arbitrators therein named, when collected by them, to said agents at Washington.

And *hw*ereas, owing to many and insurmountable obstacles, said appropriation nor any part thereof has been collected, and still remains in the Treasury of the United States.

And whereas, in the efforts already made and to be made to collect said appropriation a much larger sum will be necessary than

said sum of twenty thousand dollars, ($20,000) as mentioned in sai agreement to pay persons employed in making said collection.

And whereas, it is believed that the further sum of twenty five thousand dollars, ($25,000) in addition to said sum of twent thousand dollars, ($20,000) mentioned in said agreement will be nece sary to be expended in the collection of said appropriation.

349 And *hw*ereas, it is for the interest of all the parties hereto that the said appropriation should be collected as soon a possible and distributed among the persons entitled thereto.

It is therefore now here in consideration of the premises agreed by each and all of the undersigned and each of them does now hereby mutually agree and covenant with the other as follows, to wit:

First. That in addition to the said sum of twenty thousand dollars ($20,000) mentioned in said agreement as being due to agents and for expenses, the arbitrators shall be at liberty upon the collection of said appropriation to, and shall, if necessary pay the further sum of not exceeding twenty-five thousand dollars ($25,000) to any such agents and for any such purposes as may be necessary to collect said appropriation, it being, however, expressly provided that no part of said sum of twenty-five thousand dollars ($25,000) due from any one, *or* be paid by said arbitrators to any one until said appropriation of one hundred and sixty thousand dollars ($160,000) is actually and finally paid by the Government to the parties hereto, their arbitrators, agents or attorneys and shall only become due and be paid out of the said appropriation when actually paid by and through the efforts and services of the said agents to whom said additional sum or the necessary part thereof is to be paid, and upon full accounts and vouchers submitted to the parties hereto, their agents, attorneys or arbitrators and found satisfactory and correct and approved by them.

Second. That nothing in said original agreement or herein contained shall ever be so construed as to give such agent or other person employed or in any manner instrumental in the collection of said appropriation, any lien or claim whatsoever in law or equity to said appropriation, or any part thereof or any claim or demand of any nature whatsoever, against any of the parties to said original agreement, or hereto.

Third. That these presents shall in all things be construed as a supplemental to, and form part of the said original agreement herein. The erasure with red ink of the word "believed" appearing on the twenty-sixth line of the second page of this instrument was made before signing.

In witness of all of which witness our and each of our
350 signatures interchangeably set hereto, in duplicate, this the nineteenth (19th.) day of October, A. D., 1889.

CHARLES S. DANA AND
MARIE GROGAN DANA, *His Wife,*
By JAMES B. WELLS, *Their Attorney.*
THOMAS CARSON,
Administrator with the Will Annexed of the Est. of Maria Josefa Cavazos, Deceased.
C. B. COMBE,
Sole Executor of the Last Will and Testament of Kate M. Combe, Dec'd.
ANNETTE P. HICKS,
By E. KLEIBER, *Her Attorney in Fact.*
FANNY E. POWERS,
By E. KLEIBER, *Her Attorney in Fact.*
AGNES A. BROWNE.
JAS. A. BROWNE.
FRANCISCO YTURRIA.
JUAN SALINAS,
Pp. FRANCISCO YTURRIA,
His Attorney in Fact.
CHARLOTTE MILLER,
By W. H. MASON, *Her Attorney.*
HENRY MILLER,
By W. H. MASON, *His Attorney.*
MAT GERHARD,
Per JAMES B. WELLS, *His Attorney.*
FELICITA SALINAS,
Per JAMES B. WELLS, *Her Attorney.*
ANDREA SALINAS,
Per JAMES B. WELLS, *Her Attorney.*
R. D. HINOJOSA,
Per JAMES B. WELLS, *His Attorney.*

351 EXHIBIT A.

This contract made and entered into by and between J. B. Wells, attorney at law, of the city of Brownsville, State of Texas, of the first part, and E. N. Hill, attorney at law of the city of Washington, District of Columbia, of the second part,—witnesseth:—That the said party of the first part is the agent and attorney in fact for the collection of certain moneys due and appropriated by the Government of the United States to the heirs and assigns of Paredes and Salinas, residents of the State of Texas, which agency and attorneyship is evidenced by certain powers of attorney now on file in the said case, and the said party of the first part, desiring to secure the services of the said Hill and his associates in securing the payment

of said moneys, agrees for himself and his principals to pay to the said party of the second part ten per cent. of any and all sums that may be paid to him as agent for the above named parties out of the appropriation now made to pay for the Fort Brown reservation, the said party of the second part and his associates agreeing to give their best professional services to secure the payment of the moneys claimed at the earliest possible day, and to do all acts necessary and proper to be done by attorneys in said case.

The said party of the first part further agrees that in the event of the collection of the money appropriated to pay for the Fort Brown reservation that he will protect Gen. J. Hale Sypher, in securing the fee of five thousand dollars, for services secured by said Sypher in the passage of said appropriation, it being further agreed that should the said five thousand dollars fee be paid entirely by said Wells, then the same is to be decu-ted from the said ten per cent.

Signed this 19th day of January, 1886, in the city of Washington, District of Columbia.

JAMES B. WELLS, JR.,
Agent and Attorney in Fact for Assigns of Paredes and the Heirs and Assigns of Miguel Salinas.

(Endorsed:) United States circuit court,—western district of Texas. C. B. Combe, as executor of Stephen Powers, deceased,—*versus*—James Stillman, *et al.* In equity.—No. 21.—Return of James Stillman to rule to show cause why fund should not be paid to receiver. Filed December 20, 1898,—D. H. Hart, clerk,—by A. Grosenbacher, deputy. (98)

352 *Answer of James Stillman.*

Circuit Court of the United States for the Western District of Texas.

C. B. COMBE, Independent Executor of the Last Will and Testament of Stephen Powers, Deceased, and Others, Complainants, *against* JAMES STILLMAN, Impleaded with THOMAS Carson and Others, Defendants.	In Equity. No. 21. Answer of James Stillman.

The separate answer of James Stillman, one of the defendants herein, to the original and amended bill of complaint herein.

This defendant, with special reservation of all his rights under the limited appearance entered by him in this case, and of all his rights under his plea to the jurisdiction herein filed and overruled, and to his demurrer, herein filed and overruled, and still protesting that this honorable court is without jurisdiction to levy its process

upon him by substituted service, or to take jurisdiction of this cause, and reserving to himself the benefit of any and all exception that can or may be taken to the many errors and insufficienc-es in the said original bill and amended bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or roper for him to make answer to, saith:

First.

Answering to the original bill of complaint herein, in distinction from the so-called amended but separate bill of complaint,
353 this defendant answers as follows:

I. As to arti-le first of the said bill, this defendant admits that he is a citizen of the State of New York, and that C. B. Combe, Thomas Carson, Francisco Yturria and H. E. Woodhouse, are citizens of the State of Texas; this defendant denies that C. B. Combe has any power to act as executor of the last will and testament of Stephen Powers; and as to any other matters therein alleged, this defendant has no knowledge, but he believes them to be true.

II. As to article second of the said bill, this defendant admits that he is a citizen of the State of New York, and resides in the city of New York, and that the complainant and the defendants Thomas Carson, Francisco Yturria and H. E. Woodhouse are citizens of the State of Texas and reside in Cameron county, Texas; and as to any other matters therein averred this defendant has no knowledge, but he believes them to be true.

III. As to article third of the said bill, this defendant believes the allegations thereof to be true; but he avers that the possession and occupation of the United States was never made under any claim of title or ownership, but during the lifetime of the late Maria Josefa Cavazos, was always subject to her title and that of the late Charles Stillman, and those claiming under him, and thereafter to the titles hereinafter set forth, and was never an adverse possession as to them, but was an adverse possession as to the complainants, the said Stephen Powers and his grantors.

IV. As to article four of the said bill this defendant denies that Miguel Salinas ever acquired title to any part of the tract of land therein referred to; and he avers that the whole of the said tract of land, at the time referred to, was the private property of Maria Josefa Cavazos, to whom no compensation was ever made, and from whom no title was ever acquired, except in the manner hereinafter stated in this answer.

354 V. As to article fifth of the said bill, this defendant denies that Stephen Powers ever acquired any title whatever to any part of the said tract of land, or was ever seized in fee simple or otherwise of any part thereof. He has no knowledge, but believes it to be true, that the said Stephen Powers died at some time in 1882, leaving a last will, which was admitted to probate and a copy of which is given in Exhibit A of the said bill; but he denies that said

Stephen Powers devised any part of the said tract of land to any person whatever; and he denies that the complainant is now, or was at the time of the filing of this bill, empowered to act as an executor of any will of said Stephen Powers or is or then was administering an estate of the said Stephen Powers, as independent executor or otherwise. This defendant has no knowledge nor any information, except as contained in said bill, as to said other allegations of the said article fifth.

VI. As to article sixth of the said bill, this defendant believes it to be true that the late Maria Josefa Cavazos, during her lifetime, and her administrator after her decease, and the late Charles Stillman, after acquiring title from her and from others, and this defendant, after he acquired title through the said Charles Stillman, asserted the claim and sought the payments mentioned in the said article; and he believes it to be true that some of the other persons and estates named as parties to this suit, and also the said Stephen Powers, deceased, have since the year 1885, asserted claims to a part of the said tract of land; and he avers that, after the Congress of the United States, on March 3rd, 1885, made the appropriation stated in said bill, the said Stephen Powers, the complainant C. B. Combe, and some of the defendants, made effort to prevent the Government of the United States from paying the amount of the said appropriation to the persons justly entitled thereto, for the purpose of compelling the latter to pay to the persons thus interfering, large sums
355 of money, to induce them to withdraw their opposition; such interfering persons having themselves no hope or expectation that the Government of the United States would ever pay to them any part of the said appropriation.

VII. As to article seventh of the said bill this defendant believes the allegations thereof to be true.

VIII. As to article eighth of the said bill, this defendant believes the allegations thereof to be true, with the exception of the allegation that R. D. Hinojosa filed a separate answer in the action at law No. 248, therein referred to; the fact being that the said Hinojosa filed only one answer.

IX. As to article ninth of the said bill, this defendant avers that the act of Congress therein referred to speaks for itself, and shows upon its face its true intendment, and this defendant denies that the said act of Congress had any intendment other than that which appears upon its face. This defendant denies that the pleadings in the action at law No. 248, referred to in the said article, presented to the court a case of any great intricacy or complexity. He denies that any difficult or complicated questions of law arose upon the facts presented in the pleadings in said suit; and he avers that the only difficulties arising in the said suit consisted in the utterly unfounded and untruthful claims of the complainant, C. B. Combe and other parties thereto; and he avers that these were the only difficulties with which the parties to the said suit, or their attorneys or counsel were ever impressed.

This defendant denies that it was impossible to make a valid title to the Fort Brown reservation, except through the judgment of this or any other court; and he denies that he or his attorneys or counsel became impressed with any of the pretend-d difficulties alleged in the said bill, or were desirous of agreeing upon any plan whereby a valid title to said reservation could be vested in the United States, and he avers that he himself and Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, deceased, were the real,
356 sole and exclusive owners, at the time referred to, of the whole of the said Fort Brown reservation; that they then had a perfect, complete and valid title to the whole of said reservation, and were able, ready and willing to execute such a conveyance thereof to the United States Government, as would have vested in the said Government a perfect, complete and valid title to the whole of the said reservation.

X. As to article tenth of the said bill, this defendant admit that a written agreement was executed by and between the parties whose names are signed thereto, in manner and form as set forth in "Exhibit D," attached to the said bill; and he avers that no other agreement was entered into between the parties to this suit or any of them, except as hereinafter alleged.

XI. As to article eleventh of the said bill, this defendant denies that on the trial of the action at law referred to therein, no evidence was offered upon the issues raised in the pleadings, or that the rights and claims of the parties were not in said trial contested or litigated, or that, by consent of parties, any verdict was rendered or judgment made and entered in said suit; and he avers that there were other parties to said action at law No. 248, besides those signing the said agreement; that the verdict and judgment rendered in said action were rendered upon a hearing thereof and he avers that neither the said agreement nor any copy thereof was ever filed with the court in the said section; that the attention of the court was never called to it; that it was not in any way brought before the jury or into the trial of the said action; all of which appears upon the face of the said verdict and judgment; correct copies of which, as he believes, are contained in "Exhibit E," annexed to the said bill.

XII. As to article 12th of the said bill, this defendant denies that the title, which by said judgment was vested in this defendant and in Thomas Carson, as administrator, was vested in them or either of them, in trust, in any manner or for any purpose whatever, or subject to any trust or understanding. And this defendant de-
357 nies the right and claims of the parties to the said action at law No. 248, in and to the land and rents therein mentioned, were not adjudicated in and by said judgment; and he further denies that there was no pretense upon the part of any party to said action and judgment that any of said rights were adjudicated therein; and he further denies that it was agreed and understood by any of the parties to the said agreement or the said action that the title to said property was by said judgment placed in this de-

fendant and Thomas Carson, in trust, for any purpose. And this defendant avers that the rights and claims of the complainant C. B. Combe, as executor, and of all the parties to the said suit in and to said property, were adjudicated in and by said judgment, and that it was perfectly agreed and understood by all the parties thereto that such judgment was a final adjudication upon such rights and claims.

XIII. As to article thirteenth of the said bill, this defendant admits the execution and delivery of the deed and release copies of which are contained in Exhibits "F" and "G," attached to said bill, and that in consideration of the execution and delivery of said deed and release, the United States of America, on or about April 26th, 1895, delivered to John A. Garver, a draft or warrant upon the Treasury Department for the sum of one hundred and sixty thousand dollars, which though presented to payment, was not actually paid until Saturday, May 4th, 1895. But this defendant denies that he said Thomas Carson, as administrator or otherwise, received any part of the said sum; and he denies that he personally ever received more than $100,000 of the said sum, or that either he or the said Carson received any part thereof in trust or as trustee, for or on behalf, or for the ultimate use or benefit, of any persons whatever, except this defendant and the said Thomas Carson, as administrator as aforesaid. This defendant denies that he or the said Carson concealed from the complainant, or from any
358 other claimants the fact that the said money had been collected; and he denies that either he or the said Carson fraudulently appropriated or converted the said fund to their own use and benefit, or that they ever were, or are now, using the judgment of July 14, 1887, for the purpose of defrauding any claimants out of any benefit of said judgment, or out of anything whatever. This defendant further denies that he and the said Carson are conspiring with each other, or with any person, for the purpose of preventing or defeating a decision or settlement of any conflicting claims to said land or funds, or a distribution thereof to the true owners, by arbitration, or by this court, or in any other manner; and he further denies that he and the said Carson, or any other person, are fraudulently using any advantage obtained by them, or that they are fraudulently, or in any other way, using said judgment to deprive the true owners of said property of their just or lawful compensation therefor. This defendant admits that Mr. Ballinger, one of the arbitrators named in said agreement, has departed this life and that Mr. Culberson, another of the arbitrators, has declined to act; but he denies that he or said Thomas Carson declined to proceed to supply their places and to proceed with the arbitration, as provided for in the said agreement, or that they refused to recognize the rights of any claimants, or that they declined or refused to deposit any part of said fund in the bank of Ball, Hutchings & Co., specified in the said agreement, or that they are bound to do so by any agreement, or that they have secreted the said fund or refused to give to the plaintiffs or other claimants any information concerning the same;

or that they are, or that either of them is, a trustee of this court, or that, by virtue of any power or trust confided in them by this court, or by any court they obtain possession of any fund whatever, or are accountable to this or any court for the same. And this defendant avers that neither he nor the said Thomas Carson, as administrator or otherwise, nor both of them together, have any
359 right, power or authority to supply the places of the arbitrators deceased and resigned, or to proceed with the arbitration in any manner. This defendant further avers that neither he nor the said Thomas Carson has ever been requested by any of the arbitrators nominated by the said agreement to deposit any part of the said fund, or any moneys whatever, in the bank of Ball, Hutchings & Co., of Galveston, Texas, or in any other bank; that, as appears by the said agreement, only part of said fund was to be deposited in the bank of Ball, Hutchings & Company, and that this was to be deposited only to the credit of William P. Ballinger, T. N. Waul and David B. Culberson, arbitrators; that while the said agreement, by its express terms, contemplated an immediate collection of the said fund of $160,000.00, a period of nearly eight years elapsed before it was possible to collect the same, and that when the same was finally collected, in the year 1895, the said Ballinger had died, the said Culberson had positively declined to act, and the said Wall had entirely neglected to act for eight years, and no successor of any of them had been appointed; and neither this defendant, nor the defendant Carson, as administrator, nor both together, had any power to appoint such successors; and before the commencement of this suit the banking firm of Ball, Hutchings & Co., mentioned in the said agreement, was dissolved; so that the agreement, in respect of these matters, had become impossible of performance; and this defendant, therefore, did not and could not, deposit any part of said fund to the credit of non-existant arbitrators with a non-existent banking firm. And this defendant avers that no request or demand has ever been made upon him to supply the places of the said arbitrators or to proceed with the said arbitration, or to deposit any part of the said fund anywhere; but the complainant herein, and other claimants to the said fund, have instituted suits against this defendant, entirely regardless of the said arbitration; and none of the plaintiffs and none of the parties to the said agreement has
360 made any effort to proceed with the arbitration therein provided for or in anyway to carry the said agreement into execution.

XIV. As to article fourteenth of the said bill, this defendant avers that all the conflicting claims raised by the record and pleadings in said action at law No. 248 were, by the judgment in said action, completely and finally determined, decided and adjusted and so remain; and he denies that the estate of Stephen Powers, deceased, or any of the complainants is or are entitled to any part of the said fund of $160,000 or interest thereon; and this defendant denies that he or the said Thomas Carson have in any way defeated the [illegible]

arbitration or have rendered necessary any application to this court; and he avers that all the issues raised in the said action at law No. 248 were therein completely and finally adjudicated, and that no matters in such action were left unlitigated or undisposed of; and, as to the claims of other defendants in this suit, this defendant has no knowledge, nor any information sufficient to form a belief, except that he avers that all such claims, if any such are made, are wholly unfounded.

XV. As to article fifteenth of the said bill, this defendant denies that Rudolph Kleberg or any attorney for the United States was a party to the agreement; and he denies that the United States ever accepted the benefit of the said agreement, or ever paid anything upon the faith thereof, or pursuant thereto. He further denies that it was the understanding of any parties to the said action at law No. 248, or of their attorneys, solicitors or counsel, or of the court, that the title to the property known as the Fort Brown reservation should be vested, in trust, for any purpose whatever, in any person whatever. This defendant admits that the original of the agreement of July 13, 1887, is not among the papers in the said action at law No. 248; and he avers that it never was among those papers, and never was a part of the papers in such action at law, and never was
361 produced in court or pretended to be produced in court, or the existence thereof known to the court or jury; and he has no knowledge or information as to where the said original agreement now is or where it has been since its execution, except that he was informed that it was delivered to James R. Cox; but it has never been in the possession of this defendant.

XVI. As to article sixteenth of the said bill, this defendant admits that in the matter of the action at law and agreement therein mentioned he was represented by the attorneys and counsel therein mentioned; but he denies that the defendant Carson is his agent in Texas, except for limited purposes, specified from time to time, or that he represents their mutual interests in resisting efforts to compel an accounting.

As to the other allegations in said article sixteenth, this defendant has no knowledge; but he believes them to be true, except the allegation that the defendant Carson is insolvent.

XVII. That the statement made in the original bill of complaint and the amended bill herein—that the estate of Stephen Powers, deceased, is or ever was entitled to one-half of the said fund of $160,000—is palpably untrue and impossible to be true, on the very face of the said pleading; that, as appears by article eighth of the bill of complaint and the joint answer and plea in reconvention therein referred to, as well as by the terms of the agreement of July 13, 1887, and the record in the said action at law No. 248, as set forth in the exhibits to the said original bill itself, it was never claimed by the complainants that the said Stephen Powers was the owner of the whole of the Paredes tract, but merely that he owned it in common with Marie Grogan Dana, or that the Paredes tract

ever covered more than one-half of the said Fort Brown reservation; and therefore, upon the complainants' own showing, the complainants could never under any possible circumstances, have been entitled to more than about one-fourth of the said Fort
362 Brown reservation, and consequently not to more than about one-fourth of the said fund of $160,000, after deducting therefrom the taxes paid and other expenses lawfully incurred on account of the same.

XVIII. That as this defendant is informed and believes the amount of the said appropriation of $160,000 was based on an allowance of $60,000 for the fee simple of the said Fort Brown reservation, which is as much as the said land was worth in 1885, and is what was allowed for it in the condemnation proceeding upon which the said appropriation was founded; that the remaining $110,000 were allowed for the use and occupation thereof by the Government of the United States from 1846 to 1885, a period of thirty-nine years; and that the evidence before the congressional Committee on Appropriations, on which the said appropriation was based, shows that the rental value of the said reservation from 1846 to 1866, was at least equal to $2,500 per annum, and from 1866 onward was $3,600 per annum, which would make a total rental value from 1846 to 1885 of $118,400. That the original and amended bills of complaint herein do not in any way claim that Stephen Powers or his estate acquired any interest in the said premises, before the year 1882; and therefore the plaintiffs representing that estate could not possibly be entitled to participate in any of the allowance of rental value except for the last three years of the term, amounting at the outside to $10,800; and as they state alleged facts which clearly show that their interest in the lands and rents could not exceed one-quarter, they could not in any event be entitled to more than one-quarter of $60,800, or $15,200, from which must be deducted their share of taxes and expenses.

Second.

Answering to the alleged amended bill of complaint herein, in distinction from the original bill of complaint, this defendant answers as follows:

363 I. As to article first of the said amended bill, this defendant denies that the plaintiff C. B. Combe has any power to act as executor of the last will and testament of Stephen Powers, deceased.

II. As to article second of the said amended bill, this defendant has no knowledge and has no other information than such as is contained in the said amended bill.

III. As to article third of the said amended bill, this defendant has no knowledge and no information save that which is contained in the said amended bill, except as to the averment that certain matters are untrue in fact and of no validity in law or in equity, the truth of which averment this defendant denies.

IV. As to article fourth of the said amended bill, this defendant has no knowledge or information sufficient to form a belief, as to whether any statement in the original bill was made by inadvertence; but he avers that it was the true intent and meaning of the contract of July 13, 1887, a copy of which is contained in Exhibit D, annexed in the original bill herein, that this defendant and Thomas Carson were, upon collecting the $160,000 therein mentioned, to pay therefrom immediately the sum of $20,000 to certain agents at Washington, who assisted in procuring the appropriation aforesaid, and that it was perfectly understood between all the parties to the said agreement that such sum was to be paid to William Brady, as the principal agent in the said matter, and as representing other agents; that the said contract expres-ly recognized that the said sum of $20,000 was absolutely due to such agents; and that it was and is the intent, meaning and purpose of said contract, and of the other contracts made in regard to said fund, that the justice and propriety of paying said $20,000 was settled once for all by the said contract and was not left to the decision or determination of arbitrators, and this defendant denies that he or the said Carson has made any allegations or pretenses contrary to the truth; but he avers that he has been given au-
364 thority by the owners of the said fund of $160,000 to pass upon and determine the justice and propriety of any and all expense accounts and claims made against said fund, and to pay the same out of the fund; and he avers that by agreement subsequently made by the lawfully authorized agent and attorney in fact for the complainant, C. B. Combe, claiming to act as executor as aforesaid, and of all other parties pretending to have any interest in the said fund, this defendant was authorized and requested to pay the said sum of $20,000 to the said Brady, the further sum of $5,000 to J. Hale Sypher, of the city of Washington, out of any amount which might be payable to the said plaintiff and other claimants, if the same was not deducted by Mr. Brady from his $20,000 (as in fact it was not), and was authorized to deduct the said $5,000, if so paid, from any sum which might be found due to the said complainant and the parties associated with him.

This defendant further avers that he was authorized and empowered by a supplemental contract, dated October 19, 1889, executed by various persons claiming an interest in the said appropriation, including the complainant C. B. Combe, and the devisee under the alleged will of Stephen Powers, deceased (a copy of which contract is annexed and marked Exhibit B) and to pay out and disburse the further sum of $25,000 for expenses in collecting the said appropriation; and that under and by virtue of the power and authority thus conferred, and still more under and by virtue of the exclusive rights which this defendant and the said Thomas Carson, as administrator have to the whole of the said appropriation, there was actually and necessarily paid out of the said appropriation, for expenses in collecting the same and taxes, not only the whole of the said $25,000,

but the total sum of at least $60,000; and this defendant has actually paid out, for the same purposes, much more than $100,000, including interest, in addition. This defendant avers that the said
365 contract of October 19, 1889, speaks for itself, and that none of the averments in the said amended bill as to what the said contract does or does not mean, require any answer, the same being only inferences of law and not matters of fact; and this defendant denies that he has made any payment without authority of law, or in violation of any contract, or in bad faith, or in violation of any trust; and he avers that all such allegations in the said amended bill are scandalous and were made in bad faith and without any reason to believe that the same were true.

V. As to article five of the said amended bill of complaint, this defendant denies that he has made any allegation or pretense contrary to the truth, and he avers that all the allegations contained in the said article fifth as to the falsity of allegations made by this defendant, and as to this defendant's knowing such allegations to be false, and as to their having been made for the purpose or with the intent to deprive any estate of the protecting care of any executor, or so that it may be more easily plundered by anybody, or as to any alleged conspiracy to which this defendant was a party, are utterly false, and are well known by the original complainant herein so to be; as are also the insinuations contained therein concerning the defendant Carson and his intentions to act in his judicial office in the manner stated in the said amended bill, or in any other im*rporper* manner.

This defendant denies that the Powers estate is the owner of or entitled to any part of the appropriation made by the United States Government to pay for the Fort Brown military reservation; and he denies that it is the duty of the said C. B. Combe, or any executor to collect the same. He denies that he is in any way estopped to deny that said C. B. Combe is in fact executor.

This defendant has no knowledge, but he believes it to be true, that Stephen Powers died seized and possessed of some landed estate in Texas, as to the particulars of which he has no knowledge or information. He is informed and believes that such landed estate was
366 in 1889, partitioned among the devisees of the said will of Stephen Powers, and that all the real estate belonging to said Stephen Powers in his lifetime is now the property of the devisees of the said Powers, and is not the property of the said C. B. Combe, as executor. This defendant has no knowledge or information sufficient to form a belief as to whether the said devisees are receiving the rents, issues and profits of the said landed estate, or of any lands, but he is informed and believes that the said devisees are entitled to the rents, issues and profits of the entire real estate which Stephen Powers devised by his will. And that the said C. B. Combe, as executor, is not entitled to collect the same, and is not in fact collecting or attempting to collect any part thereof. This defendant denies that the Paredes tract mentioned in the said amended

bill, forms a part of the city of Brownsville, and this defendant had no knowledge or information sufficient to form a belief as to what are the boundaries of the said tract, except that it does not include any part of the city of Brownsville, or of the Fort Brown reservation; and he has no knowledge or information sufficient to form a belief as to the alleged judicial proceedings, copies of which are alleged to be given in the said amended bill. This defendant denies that he has ever been a party to any conspiracy having for its object the deprivation of the said Powers estate or any one else from the protection of the said executor, or for the acquisition of said estate or any part thereof; and as to any other matters or things alleged in the said article sixth this defendant has no knowledge or information sufficient to form a belief, except that he believes it to be true that the devisees of the estate of Stephen Powers do not own more than an undivided five-eighths (⅝) of the said Paredes tract; and he avers that no part thereof is owned by the complainant C. B. Combe, as executor or otherwise.

VI. As to article sixth of the said amended bill, this defendant admits that he and Thomas Carson as administrator, appointed John A. Garver their lawful agent to collect and receipt for
367 the sum of $160,000 from the United States Government, and that the said Garver, as such agent, received said money and executed a receipt therefor; but this defendant avers that of said fund the sum of $100,000 and no more, was paid by the said Garver to this defendant, the remainder being deducted for the taxes, amounting to $8/101.02, and for necessary expenses; and no part thereof was paid to the said Carson; and this defendant never received from any source whatever, out of the moneys so paid by the United States Government, any more than the said sum of $100,000 against which he has paid more than $100,000 for necessary expenses, as aforesaid, including interest.

VII. As to article seventh of the said amended bill, this defendant denies that Stephen Powers at his death, or at any other time, owned more than one-half or any part of the said Fort Brown military reservation, or that he or his estate owned or ever did own at least one-half of any part of the said fund of $160,000; and this defendant avers that the allegations to that effect contained in said article seventh and also in article fifth of the original bill, are directly contradicted by the allegations contained in article fifth of the amended bill, that the defendant Marie Grogan Dana owns and undivided three-eighths (⅜) interest in the said Paredes tract.

VIII. As to article eighth of the said amended bill, this defendant denies each and every allegation thereof.

Third.

And this defendant, further answering on information and belief, alleges:

I. That none of the plaintiffs nor any of the parties to this suit, except this defendant and Thomas Carson as administrator, have or

ever had at any time any right, title, interest or claim in or to the premises commonly called the Fort Brown reservation, or to any of the real estate conveyed by the deed set forth in the bill of complaint herein, or have, or ever had at any time any right, in-
368 terest or claim in or to the sum of $160,000 appropriated by the Government of the United States and paid for the conveyance of the said Fort Brown reservation, and that this defendant, and the said Thomas Carson, as administrator, were, at the time of the conveyance of the said real estate to the Government of the United States, the sole and exclusive owners, legal and equitable, of the whole of the said Fort Brown reservation.

II. That the land included in the Fort Brown reservation was part of a much larger tract of land, the whole of which was granted by the Crown of Spain in the year 1781, to Jose Salvador de la Garza, which grant was confirmed to his heirs and assigns by an act of the legislature of the State of Texas, passed February 10, 1852, wherein said Spanish grant is described under the name of the Espiritu Santo grant; that the original grantee died in or about the year 1782, leaving three children, his sole heirs at law, each of whom entered into possession of a specific third of said grant, one child, a son, Blas Maria de la Garza, entering into possession of the middle third thereof, which includes the said Fort Brown reservation; that the said Blas Maria de la Garza, died seized of the said middle third in or about the year 1802, leaving his last will and testament, by which he devised one-fifth of the said middle third to his niece, Maria Josefa Cavazos, and the remaining four-fifths to his wife, Francisca Cavazos; that afterwards, in the year 1835, the said Francisca Cavazos died, leaving her last will and testament, by which she devised her interest in the said middle third to said Maria Josefa Cavazos; and that by an act of partition duly executed, long before 1846, according to the law then in force between and among all the owners of the Espiritu Santo grant, that portion of the said tract of land which covers the whole of the Fort Brown reservation, as well as the whole site of the city of Brownsville, was apportioned to and became the sole property of the said Maria Josefa Cavazos.

369 III. That during the whole of the year 1846, and particularly at the time when the tract of land, now known as the Fort Brown reservation, was seized by General Taylor, in command of the armed forces of the United States, and on behalf of the United States, such tract was the sole and exclusive property of the said Maria Josefa Cavazos; and she was actually and exclusively seized and possessed of the said tract at the time when the armed forces of the United States took forcible possession of it as aforesaid. That neither the said Miguel Paredes, nor any of his heirs, ever owned or possessed any part of the said Fort Brown reservation.

IV That in pursuance of an act of the legislature of the State of Texas, passed December 19, 1849, Stewart Van Vliet, the commanding officer of the United States Army in charge of *of* Fort Brown,

acting under the authority and direction of the Secretary of War, and of the President of the United States, appeared in the year 1853 in the district court of Cameron county, Texas, and presented his petition in writing, on behalf and in the name of the United States, in accordance with said statute for the survey and appraisal of the value of the premises, then and ever since known as Fort Brown, and to condemn the said premises for the use and purposes of the United States, and to compel a conveyance thereof to the United States.

V. That thereupon the said district court made an order, which it directed to be published in a public newspaper known as the "American Flag," published weekly at Brownsville, the county seat of Cameron county; which order was duly published in the said paper for eight weeks successively, requiring all persons interested or claiming to be interested in the said premises known as Fort Brown, being the same premises described in the original and amended bill of complaint herein as the Fort Brown reservation, to be and appear in the said court, upon a certain day therein
370 appointed, and then and there to set forth and establish their titles or claims. That on the day thus appointed, the said Maria Josefa Cavazos, and also the said City of Brownsville, duly appeared in the said court by their respective attorneys (the said Stephen Powers appearing as attorney for the said city) and each set forth their respective claims of title, each of them claiming in hostility to each other and to all the world, exclusive right, title and interest of, in and to the said premises. None of the parties to this suit appeared in that proceeding nor did any person or persons appear under whom any of them except this defendant and Thomas Carson, as administrator, now make or ever have made any claim; and the only contesting parties before the court on that occasion were the said Maria Josefa Cavazos and the said City of Brownsville.

VI. That then and there the said court duly ordered the said premises to be surveyed; and the same were surveyed and the survey thereof was brought into the said court; and the said City of Brownsville and Maria Josefa Cavazos, being present in court by their respective attorneys (the attorney for the said City of Brownsville being the said Stephen Powers), and a competent jury being empanelled and sworn according to the said statute, for that purpose, to ascertain and determine the value of the said lands and premises, did, after viewing the same and hearing the evidence and allegations of the said parties then before them, return with their verdict into court; and then and thereon the 29th day of November, 1853, they duly rendered their verdict, by which they found the value of the said lands to be the sum of $50,000, which verdict was then and there duly received, recorded and approved by the court and to its satisfaction.

VII. That in consequence of a dispute between the City of Brownsville, on the one part, and the said Maria Josefa Cavazos on the other part, and there being an action at law pending between

the said parties involving the title to a large tract of land, including the said Fort Brown reservation, and such ac-
371 tion being then pending and undetermined, all further proceedings in the said condemnation proceeding, were suspended to await the final result of the litigation so involving the title; and thereupon the Army of the United States, by direction of the Secretary of War, took exclusive possession of the whole of said premises, put up a substantial wall and fences about it, erected substantial buildings thereon, and continued from that day until the execution of the deed hereinafter mentioned, to hold and possess the same, subject, however, to the proceedings pending for condemnation and expropriation as aforesaid.

VIII. That on the 25th day of May, 1875, the said Maria Josefa Cavazos, by her deed of conveyance, under seal duly granted, sold and conveyed one undivided half part of a tract of land, including the whole of the said Fort Brown reservation, and also a one-half interest in all claims against the United States Government for the use and occupation thereof, to one, Charles Stillman, who afterwards departed this life leaving as his widow and sole heirs at law, Isabel G. Stillman, Clara F. Stillman, Bessie G. Stillman, Charles Stillman, and this defendant; and the said widow and the other heirs all united in a deed on March 9th, 1895, conveying to this defendant the whole of the said undivided half of the said Fort Brown reservation.

IX. That judgment was duly rendered by the circuit court of the United States, at the city of Galveston, on the 6th day of June, 1876, in the said action pending between her and the said city of Brownsville, by which judgment it was duly adjudged that she said Maria Josefa Cavazos was the sole owner of the said Fort Brown reservation, and that the said city of Brownsville was not entitled to any part thereof, but that its claims were entirely void; that a writ of error be taken therefrom to the Supreme Court of the United States, and the said Maria Josefa Cavazos dying in the year 1878, before the said writ of error was argued, the same was revived by
372 her executor, Pedro G. Cavazos, and the said judgment was affirmed by the said Supreme Court.

X. That the said Maria Josefa Cavazos, when she died, left her last will and testament, by which she devised to her said son Pedro G. Cavazos, the undivided one-half interest in the said Fort Brown reservation which remained in her, and appointed him sole executor of the said will, and thereupon shortly before the final affirmance of the said judgment of the Supreme Court of the United States, the said Pedro G. Cavazos revived the said proceeding commenced in the district court of Cameron county in 1853; and thereupon the said court duly entered judgment upon the verdict aforesaid, condemning the said Fort Brown reservation to the use of the United States and directing that the amount to be paid by the United States for the said premises, should be paid either to the executor of the said Maria Josefa Cavazos, deceased, or to the city of Brownsville, as

the said Supreme Court of the United States might ultimately decide and adjudge the title to the said premises to be vested.

XI. That afterwards the said Pedro G. Cavazos, being unable to qualify as executor aforesaid was by the action and judgment of the county court of Cameron county, where the said last will of Maria Josefa Cavazos had been duly proved and admitted to probate, and where the said premises are situated, duly removed as such executor; and the defendant Thomas Carson was duly appointed by said court administrator of the estate of Maria Josefa Cavazos, deceased, with the will annexed, and was thereupon duly qualified by suitable bail and duly sworn to discharge the duties of such administrator, and was authorized and directed to take the share of the said testatrix in the said Fort Brown reservation, with all its rents, issues, interest, income and profits into his possession and control as such administrator, subject to the further orders of said court.

XII. That afterwards, and on or about the 11th day of February, 1887, in and by a judgment of the district court of Cameron
373 county, rendered in an action brought therein by Thomas Carason as administrator as aforesaid, plaintiff, against the said Pedro G. Cavazos as defendant, it was duly adjudged that the said Thomas Carson, as administrator as aforesaid, should recover all the right, title and interest of the said Pedro G. Cavazos in and to the said premises, and the rents, issues, dues and profits thereof; and the said Thomas Carson, as such administrator, thus acquired an undivided one-half interest aforesaid in the said premises and in all the accrued rents and profits thereof.

XIII. That the said Maria Josefa Cavazos, during her whole life time, after the seizure of the said Fort Brown reservation by the United States Government, in manner aforesaid, continued with all diligence to prosecute her claim against the United States for compensation for the use and occupation of the said reservation, and for either the recovery of the premises or payment of the full value thereof; and as during most of that time such claims against the United States could only be prosecuted by memorials to Congress or to the War Department, such claim not being cognizable by any court of law or equity against the United States, the said Maria Josefa Cavazos employed attorneys and counsel for many years to present such memorial and prosecute such claims before Congress and the War Department. That many years before her decease, she entered into a contract with Charles Stillman aforesaid, the father of this defendant, by which she agreed to sell and convey to him, for certain valuable considerations, an undivided one-half interest in all her title to the said Fort Brown reservation, and in all her claims on account of the seizure of said reservation and its occupation by the United States Government; and for many years and up to the time of his decease, the said Charles Stillman continuously assisted the said Maria Josefa Cavazos in the prosecution of her claim, for the joint benefit of her and himself, doing this at his

own expense for many years before the deed of *of* conveyance
374 was made to him as aforesaid, and continuing to do so thereafter upon the express understanding and agreement that he should be reimbursed out of any moneys recovered from the Government or received for the said premises, for all sums thus paid and obligations incurred by him, and after the decease of the said Charles Stillman this defendant on the same terms continued without intermission the prosecution of such claims for the joint benefit of the said Maria Josefa Cavazos while living and her estate after her decease, and the estate of the said Charles Stillman.

XIV. That none of the complainants nor any of the defendants other than this defendant and the said Thomas Carson, ever rendered any assistance in the prosecution of the said claim, or in the prosecution of any claim whatever on behalf of any person whatever against the United States Government for or with respect to the Fort Brown reservation in any manner; and none of them contributed any assistance toward the procuring of the act appropriating the money in payment for such reservation, or in the collection of such appropriation after it was made; but on the contrary the complainant C. B. Combe, claiming to act as executor, and several of the other defendants herein, on whose behalf the complainants allege a claim of title to part of the said reservation, for some time put every obstacle in their power in the way of the collection of any sum whatever from the United States Government as compensation for the seizure and occupation of the said reservation.

XV. That all efforts to procure any payment or appropriation for the purpose of payment on account of any of the said claims against the United States Government had entirely failed down to the year 1895. That for several years prior to 1885, this defendant made diligent and persevering efforts to secure the pass-ge through Congress of an appropriation similar to that which was finally made by the act of March 3rd, 1885; and that this defendant furnished all the money expended for this pur-
375 poses, the expense of which was considerable. That it became and was absolutely necessary to make a contract with some one of experience who could give his constant personal attention thereto to push forward the said claim to collect the facts with reference thereto, and to cause such facts to be presented at the proper time to the appropriate committees of both houses of Congress, and for this purpose this defendant agreed with William Brady, Esq., who was a fit and suitable person for that purpose, to prosecute the said claim and to employ the necessary attorneys and counsel to present and urge it at his own expense; all of which he agreed to do in consideration of an agreement on the part of this defendant to pay to the said Brady compensation for such services and disbursements, such compensation to be payable only out of such appropriation.

XVI. That the said Brady diligently and by proper and legitimate means prosecuted the said claim for several years, presenting

in person or by counsel before open meetings of the proper committees in each branch of Congress, documentary and oral evidence and argument in support of such claim; that in this manner, and not otherwise, and as a result of the efforts, expenditure and agreements of this defendant, the committees in both houses of Congress finally reported unanimously in favor of an appropriation of $160,000, as full payment for a conveyance of the said Fort Brown reservation of the United States and a release and satisfaction of all claims against the United States for the rent, use or occupation thereof; that the said appropriation clause was fully discussed in open session of Congress, with ample reference to documentary and other evidence, all of which evidence had been furnished by this defendant without any assistance from the complainants or any of the defendants, and upon the faith of this evidence, and in exclusive reliance thereupon, both houses of Congress agreed in enacting the said appropriation of March 3rd, 1895.

XVII. That the said Thomas Carson, as administrator as
376 aforesaid, united with this defendant in diligent efforts to collect the said sum of $160,000 from the United States; but all the expenditures made for that purpose were made exclusive by this defendant. That none of the complainants, or of the other defendants, in any way assisted in the work of collecting the said sum, either by personal services, or the employment of agents, or the expenditure of time or money; but upon the contrary, the complainants and most of the defendants, including all parties hereto to make any claim adverse to this defendant, made energetic efforts to prevent the payment of the said sum of $160,000 to anybody, and put every obstacle in their power in the way of such payment. That from 1885 to 1895, certain persons represented to the successive Secretaries of War, Attorneys General and officials and clerks in various executive departments of the Government, and to various committees of Congress from time to time, that the said appropriation was fraudulently obtained and was greatly in excess of the true value of the property, and they persuaded many executive officials and several committees of Congress that the said appropriation ought not to be paid to anybody, and accordingly, under the influence of these representations, Hon. William C. Endicott, Secretary of War from 1885 to 1889, Hon. Redfield Proctor, Secretary of War from 1889 to 1891, and Hon. Stephen B. Elkins, Secretary of War from 1891 to 1893, positively refused to pay any part of the said appropriation. Various committees of Congress reported adversely to the same, and at least one act was passed by the House of Representatives, reducing the appropriation from $160,000 to $50,000, that all such representations were false and fraudulent and were known by the persons making them to be so; but they would inevitably have prevented the payment of the said appropriation had it not been for the constant efforts and the large expenditures of this defendant; and the said C. B. Combe, instead of making any effort

to induce the Government of the United States to pay the
377 said appropriation to anybody, used his best efforts, down to June, 1887, to prevent such payment altogether, well knowing that he could not recover anything by just and lawful proceedings, but hoping by thus placing obstructions in the way of any payment by the Government, to compel this defendant to pay to him a large sum to withdraw his opposition; and the same motive operated in the minds of all the persons who participated in the hindrances and obstructions aforesaid.

XVIII. That in the year 1886, the said William Brady demanded payment of the sum of $20,000 claimed to be due to him for securing the said appropriation, less $1,500, previously paid to him, and the further sum of $12,000 for services performed by him in assisting in the efforts made to collect the said appropriation, and upon this ground the said Brady brought suit against this defendant in September, 1886 (which was transferred to the circuit court of the United States for the southern district of New York) for the sum of $30,500; that this defendant actually defended the said suit, and the same was subsequently, in December, 1888, compromised by the defendant's paying to the said Brady the sum of $500.00 in cash, in addition to the $1,500 previously paid to him as aforesaid, and the agreement to pay him within one week after the collection of the said appropriation, the further sum of $20,000 which was paid accordingly in May, 1895.

XIX. That in addition to the sum of $22,000 paid to the said Brady as aforesaid, J. Hale Sypher, Esq., of Washington, D. C. insisted that he had rendered valuable services to the said Brady in procuring the appropriation, and that the said Brady had agreed to allow him $5,000 for his services out of the $20,000 aforesaid; that the said Brady denied this, and the said Sypher then insisted that the owners of the property should recognize his claim and provide for its payment; that for some years this defendant positively refused to do so, and thereupon the said Sypher filed a lien for his services in the War De-
378 partment and obstructed the payment of the said appropriation; and eventually the complainants and a number of the defendants entered into an agreement, by their duly authorized attorneys, a copy of which is hereto annexed, marked "Exhibit A," providing for the payment of the said sum of $5,000 to the said Sypher, out of any amount which might be payable to them in case the same was not allowed by the said Brady from his $20,000; and the complainants' said attorney strongly recommended this defendant to allow the claim of the said Sypher. That the said Sypher subsequently performed many valuable services in connection with the efforts made by this defendant to collect the appropriation, and at the request of the complainants, in manner aforesaid and in pursuance of said agreement, the sum of $5,000 was actually paid to the said Sypher in May, 1895, out of the said appropriation; and the said sum of $20,000 was in like manner paid to the said Brady out

of such appropriation, both amounts being actually paid by this defendant in addition to the said $2,000 paid to the said Brady as aforesaid; both of such payments being made by the authority and with the express approval of the complainants, through their duly authorized attorney and agent.

XX. That on or about October 19, 1889, a further agreement was executed by various persons claiming an interest in the said appropriation, including the original complainant, C. B. Combe, and the devisees under the will of Stephen Powers, deceased, a copy of which is hereto annexed and marked "Exhibit B," providing for the expenditure of the further sum of $25,000 in collecting the said appropriation; that when the said last agreement was executed it was believed by all parties that the appropriation could be collected immediately thereafter, on the supposition that the Government would make the payment to this defendant and to the defendant Carson, as administrator, as soon as the opposition thereto by
379 the complainants and the other defendants had been withdrawn; but the said appropriation was not in fact collected until nearly six years afterward, and after the expenditure of vast amount of time and much additional money in the effort to collect the same. That the complainants, or their duly authorized attorney and agent acting on their behalf, were well informed of all these facts, and were further well informed of the nature, necessity and value of all the services rendered, and expenses and disbursements incurred with reference to the said appropriation; and they never communicated to this defendant any objection to such payment until long after they had been made, and then only by the commencement of this suit. That in addition to this payment, there was paid out for taxes on the Fort Brown reservation, the sum of $8,101.02, which payment the United States Government required to be arranged before it would pay any part of the said appropriation or accept a conveyance of the said premises. That including this last payment there was actually paid out of the said appropriation, before this defendant received any of it, the sum of $33,101.02, with the full consent of the plaintiffs, through their attorneys and agents, and without any objection ever being made by any of the complainants or defendants herein; and there was paid out in addition, for necessary expenses as aforesaid, the further sum of at least $26,898.98, without receiving any notice of objection from any of the complainants or defendants until the commencement of this suit.

XXI. That in addition to all the services and expenditures hereinbefore mentioned, this defendant and Thomas Carson both personally visited Washington repeatedly during the ten years which elapsed before the payment of the said appropriation. The said Carson spending nearly two years at Washington for the purpose of pushing the said claim and removing the obstacles which stood in the way of its payment; and this defendant exercised the utmost diligence in his efforts to collect such claim and without such services

the said appropriation never would have been paid to any-
380 body.

XXII. That all the services rendered and expenditures made as aforesaid were absolutely necessary and indispensable for the collection of the said sum of $160,000 from the United States Government; and if such services had not been rendered and such expenditures made no part of the said sum would ever have been collected by anybody; that such services and expenditures extended continuously and practically without intermission over the entire period of over ten years after the enactment of the said appropriation of March 3rd, 1885, payment not being actually made until May 4th 1895; that none of the plaintiffs, and none of the defendants except this defendant and Thomas Carson ever rendered the smallest service or contributed the smallest sum of money or thing of value or evidence or document, in aid of the collection of the said appropriation; but on the contrary they remained entirely supine and indifferent, except during that part of the time in which they made active, malicious and vindictive efforts to prevent any part of the appropriation to anybody whatever. That the documents and other evidence furnished to the United States Government, upon the faith of which the said Government finally, after ten years' delay, paid the sum of $160,000, furnished uncontradicted evidence of an exclusive and perfect title to the whole of said Fort Brown reservation in this defendant and Thomas Carson as administrator of the estate of Maria Josefa Cavazos aforesaid; that none of the plaintiffs or other defendants ever submitted any legal evidence of title on their part, either to the said Fort Brown reservation or to the said appropriation, and well knew that they could not produce any such evidence, never having had any; and they knowingly and deliberately stood by and permitted the Government of the United States to pay the said sum of $160,000 to this defendant and the said Carson, as administrator aforesaid under the said claim of exclusive
title in them, which was justly, lawfully and truly made,
381 proved and established; and that neither this defendant nor the said Carson made any misrepresentations to the Government of the United States, nor did either of them ever request the complainant or any of the other defendants to abstain from presenting to the Government of the United States any just or lawful evidence which they might have or claim to have, claiming to show their title or the title of any of them to the said premises or to the said appropriation.

XXIII. That as this defendant respectfully submits to this court by reason of the foregoing facts and circumstances, and of the utter and absolute neglect of the complainants, and the other defendants, to assist in rendering the services and making the expenditures aforesaid for a period of ten years after the appropriation was made, for a period of nearly eight years after the agreement of July 13, 1887 was made, and for several years after the agreement of arbitration therein co ntained had become entirely ineffectual and impossi-

ble of performance, by reason of the death or refusal of the arbitrators to act, and the total neglect of the plaintiffs and other defendants to put the machinery of arbitration in motion, the complainant and all the defendants, other than this defendant and the said Carson, as administrator as aforesaid, are in equity estopped and debarred from making any claim on a fund to the recovery of which they never contributed in the slightest degree, and no part of which would have been recovered but for the exertions of this defendant and the said Carson, and the large expenditures of money made by this defendant alone.

XIV. That by reason of the proceedings, verdict and judgment rendered in the condemnation proceedings hereinbefore described, which were commenced in the year 1853, and revived and continued in the year 1879, and by reason of the fact that none of the complainants and none of the defendants, nor any grantor under whom either of the complainants or any of the defendants, except this defendant and the said Carson, as administrator, now claim, ever appeared in said condemnation proceedings, or asserted any
382 claim, right, title or interest in or to the said Fort Brown reservation upon such proceedings or in any other manner during that entire period, the grantors or the plaintiffs, and of the said other defendants, as well as the plaintiffs, and the said other defendants themselves are now estopped and forever barred from asserting any title to the said reservation or any claim to the award of damages made for the taking of such reservation, or to the said appropriation or fund of $160,000 or any part thereof which was founded upon such award.

Fourth.

And this defendant further answering on information and belief, alleges:

That the plaintiffs herein are barred from maintaining this suit, because, and this defendant avers the facts to be that ever since about the year 1835 the said premises known as Fort Brown reservation have been, and long before that time, were claimed, owned, held and occupied by Marie Josefa Cavazos, or her ancestors, or those claiming through and under her adversely to the complainant; that she and those claiming through and under her, including this defendant, have paid all the taxes upon the said premises, and have continually asserted title thereto, and have never r-linquished their right, title or claim thereto at any time. That no other person or persons have ever occupied the said premises or any part thereof, except that the United States Government, as hereinbefore set forth, peaceably took possession of the said premises, but without ever asserting title thereto; and the United States in taking and holding possession of the said premises, have constantly recognized the legal title of said Maria Josefa Cavazos, and those claiming through and under her, and have held under them and as their tenants; and have requested them to pay all taxes due upon the

premises which they have done; and the United States have never held or claimed their possession of the said premises adversely to the title of the said Maria Josefa Cavazos, and those claiming
383 through and under her, and this defendant and the said Thomas Carson, as administrator aforesaid, or those through and under whom they claim, have had and held peaceable and adverse posses-ion of the said premises, using and enjoying the same against any claim of right, title or interest asserted by any of the parties named in this suit, for a period of more than ten years next before the 1st day of May, 1846, and for a period of more than ten years next before the commencement of this suit, or of the said action at law entitled No. 248, referred to in the bill of complaint.

Fifth.

And this defendant further answering on information and belief, alleges:

That during and for the years 1873, 1874 and 1875, certain State and county taxes were duly assessed upon the premises described in the bill of complaint, and were posted, listed, and for the want of personal property of the owners available to the tax collector of the precinct, were uncollectable and uncollected after ten days beyond the proper time when the same were due and payable, and after due notice according to the statute in such case provided, given to the proper delinquent parties by the sheriff, and there being no personal property available for the collection of the said taxes, which were assessed upon said premises to the amount of over $250.00 for each and every of said years, an order of survey was duly made by said sheriff, and a survey of said premises, being duly made according to the requirements of the statute, and proceedings were duly had in the county court of said Cameron county that the said premises were duly ordered to be sold, for the purpose of collecting the said several amounts of delinquent taxes, and the said premises were, by the proper officers, after due notice, duly publicly sold on the 18th day of March, 1878, to this defendant, who then and there became the purchaser thereof, in pursuance of the statute in such case provided, and thereupon he received from
384 the said officer the appropriate receipt of certificate provided by law, and paid to said officer the full amount of delinquent taxes of the years aforesaid of 1873, 1874 and 1875, with the interests, costs and expenses according to the said statutes, in all the sum of $871.00 and upwards; and afterwards, after waiting for three years or thereabouts, the said premises not being redeemed nor the said money or any part thereof repaid, this defendant received from the proper officers of the State of Texas the appropriate deeds of conveyance for the whole of said premises to him, the said defendant, his heirs and assigns forever, which deeds were afterwards duly recorded in the office of the county clerk of Cameron county, Texas, and remain to this day in full force and virtue.

Sixth.

And this defendant further answering, on information and belief, alleges:

That the complainants and the heirs and devisees of Stephen Powers, deceased, and Marie Grogan Dana, and Charles S. Dana and all of the parties to this suit who claim title to the said Paredes tract, by, through, or under Jose Miguel Paredes, are estopped and concluded from setting up or asserting that they or any of them ever had any claim of right, title or interest in and to the said Fort Brown reservation, or any part thereof, because:

They each all and every one of them, deraign and assert title to the said Paredes tract by, through or under the said Jose Miguel Paredes, who duly devised all his interest therein to one Clemencia Prieto, who duly conveyed the said tract to James Grogan by a certain deed and conveyance executed by Miguel Fernandez, under power of attorney form the said Clemencia Prieto at Matamoros, Mexico, on March 18th, 1848, acknowledged before Joaquin Arguelles, notary public, and recorded in deed records of Cameron county records in Book A, pages 356 to 363 inclusive; in which deed
385 the said Paredes tract of land is described as consisting of "ten square leagues of pasture land, situated in the portrero Espiritu Santo, on the other side of the Rio Bravo, between Los Tomates and Santa Rosalia, and extending back to the north for quantity."

That the said Los Tomates referred to in said description was at the time of the execution of said deed and still is a ranch or small settlement, the location of which is and was notorious and well known, and is several hundred yards east of the said Fort Brown reservation; and neither the said Jose Miguel Paredes, nor Clemencia Prieto nor James Grogan nor Stephen Powers ever claimed that the western boundary line of the said Paredes tract extended beyond the said Los Tomates ranch; but they all and each of them recognized and admitted the validity of the title of Maria Josefa Cavazos and those claiming under her to the land lying between the said ranch and the said Fort Brown reservation. That the said Santa Rosalia referred to in said description was, at the time of the execution of the said deed, and still is, a ranch or small settlement, the location of which is and was notorious and well known, and is about two miles east of the said Fort Brown reservation.

That at the time of the execution of said deed, the Fort Brown reservation was in the possession and occupancy of the United States military authorities, and the locality and limits thereof were and are notorious facts well known then and now.

That under and by the said deed no part or portion of the Fort Brown reservation was conveyed or was sought or intended to be conveyed.

Seventh.

And this defendant answers to the interrogatories contained in the original bill of complaint herein, which he is thereby required to answer under oath:

I. Answering to the first interrogatory, this defendant says:

386 1. That — the appropriation of $160,000 therein referred to this defendant received on or about June, 1895, the sum of one hundred thousand dollars ($100,000), and no more.

2. That this defendant and Thomas Carson, as administrator aforesaid, executed a power of attorney to John A. Garver to collect, on their behalf, from the Government of the United States, the sum of one hundred and sixty thousand dollars ($160,000); and as this defendant is informed and believes, the said Garver did collect from the said Government on or about May 4th, 1895, the said sum of one hundred and sixty thousand dollars ($160,000); but he never paid to this defendant any more than the said sum of one hundred thousand dollars ($100,000), which he paid to this defendant, and which is all that this defendant has received, directly or indirectly, out of the said sum of one hundred and sixty thousand dollars ($160,000); and as this defendant is informed and believes, the said Garver never paid anything to the said Thomas Carson as administrator or otherwise.

3. That the sum of sixty thousand dollars ($60,000) retained, as aforesaid, by the said John A. Garver, and never in any way directly or indirectly paid over to this defendant, was as this defendant is informed by the said Garver and believes, paid out by him at the time, to the persons and to the amounts hereinafter set forth, to-wit:

1895.

Ap'l 26. Paid for discount on New York exchange for draft of $160,000..... $80.00

May 6. Paid to Shearman & Sterling for the amount of taxes due on the Fort Brown reservation up to the time of its transfer to the United States, said amount having been advanced by said Shearman & Sterling, in order to make it possible to obtain payment from the United States..... 8,101.02

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May 6. Paid to Shearman & Sterling in compensation for their services covering a period of about thirteen years in perfecting record title to Fort Brown reservation, superintending and conducting litigation with respect to those premises and with respect to the appropriation made in payment therefor, and for legal services in those matters and in procuring the said appropriation to be made and paid..... 25,000.00

May 6.	Paid to Shearman & Sterling on account of disbursements necessarily made by them in the matters aforesaid, but only in part payment thereof.....	1,818.98
May 8.	Paid to William Brady, in pursuance of contract with him and in compensation for his services in procuring the appropriation of $160,000 and assisting in its collection.....	20,000.00
May 8.	Paid to J. Hale Sypher for similar services.....	5,000.00
		$60,000.00

4. That of the sum of one hundred thousand dollars ($100,000) received by this defendant as aforesaid, he applied the whole amount to his own partial reimbursement for the following expenditures necessarily made in good faith either by him or by his father Charles Stillman, in perfecting and securing the title of Mari-Josefa Cavazos to the premises known as the Fort Brown reservation, and in defending her title and the title which said Charles Stillman, and through him this defendant acquired to one-half of the said reservation, from attacks made in various courts and also in procuring the said appropriation of one hundred and sixty thousand dollars ($160,000), in collecting the same, in defending such appropriation from the numerous attacks made upon it before Congress and the executive departments of the United States, and in furnishing to the United States such evidence of title as was required by
388 the executive departments aforesaid, or by committees of Congress; the claim of the said Charles Stillman for reimbursement of his payments having been duly assigned by his personal representatives and legatees to this defendant; and all the title of the said Charles Stillman in and to any part of the said Fort Brown reservation having been duly granted and conveyed by all the heirs and devisees of the said Charles Stillman to this defendant.

In repayment of the expenditures of the late Charles Stillman during his life time for legal services and disbursements in the matters aforesaid, between the year 1850 and the year 1872, all claim for such repayment having been duly assigned, as aforesaid, to this defendant.....	$18,383.59
In payment of interest upon the foregoing expenditures of the late Charles Stillman, at eight per cent. per annum in accordance with the laws of Texas, more than	36,000.00
In repayment of the sums actually paid by this defendant to James R. Cox Esq. for his legal services in the matters aforesaid between March 1874 and March 1890	31,102.53

In repayment of sums actually paid by this defendant to James R. Cox, Esq., between November, 1874 and March, 1887, for his actual and necessary disbursements in and about the matters aforesaid..... 2,336.87

In payment of interest upon the foregoing payments to Jas. R. Cox, Esq., computed at eight per cent. per annum from the time of payment, in accordance with the laws of the State of Texas, more than..... 40,000.00

5. That this defendant has actually and necessarily expended for the purposes aforesaid many thousands of dollars in excess of all that he has received as aforesaid, and that he is law-
389 fully and justly entitled to interest upon all the said payments.

6. That in addition to the foregoing claims which this defendant is justly entitled to set up, and hereby does set up, against all claims from any party against the fund aforesaid, this defendant has personally applied himself actively for nearly twenty years past—first in clearing up the title to the Fort Brown reservation, so as to make a good and valid claim upon the United States Government for its value, use and occupation, second, in pressing upon the attention of the United States Government the just claim which this defendant and the estate of Maria Josefa Cavazos had upon the Government on account of the Fort Brown reservation; and third, for ten years past, in endeavoring to collect the amount of the appropriation after the same had been directed by Congress to be paid; that this defendant is the only party to this suit who ever advanced any of the disbursements necessary for the accomplishment of these purposes; that if he had not devoted his personal attention and energy thereto, nothing whatever would have been collected by anyone, and that the services rendered by this defendant in the matters aforesaid were reasonably worth at the very least $25,000.

That all the said moneys were necessarily, justly and properly expended in good faith, for the purpose of establishing and protecting the title to the Fort Brown reservation against unfounded attack for the purpose of collecting the said sum of one hundred and sixty thousand dollars; and if the same had not been expended in the manner and for the purposes aforesaid, the said sum of $160,000 never could have been collected down to the present day, and to the best of this defendant's knowledge and belief, never could have been collected at all. That if the services of the said William Brady, and of the agents, attorneys and counsel whom he employed under his direction to collect the evidence and present the said claim
390 to Congress, had not been employed, and no similar persons equally well qualified to render such services had been employed in their place, no part of the said appropriation would ever have been made. That no department or officer of the United States Government and no member of Congress, had any information on the subject prior to the enactment of the said appropriation,

which would have justified the same, except such as was furnished by agents of this defendant, or of the said William Brady.

That a large portion of the said expenditure was necessarily incurred in procuring and presenting to successive Secretaries of War, Attorneys General, and officials of various executive departments in Washington, the evidence which was required by them as to the title to the property and the rights of the claimants to the said appropriation, and in resisting before the War Department the Attorney General the Treasury Department and several committees of both the Senate and House of Representatives, to which the matter was afterwards referred, the false, unfounded and malicious attacks which were made upon such claimants, and the repeated efforts which were made to secure in Congress a repeal of the said appropriation, or its reduction to the sum of $50,000 or less; all of which attacks were made by persons who hoped thereby to compel this defendant to pay them large sums of money as an inducement to withdraw their opposition, and in pursuance of notice which several persons gave to this defendant, or his agents, that their opposition would continue until they were bought off.

That in every one of the ten years following the enactment of the said appropriation, this defendant and the said Thomas Carson, as administrator, diligently prosecuted their claim for the payment of the said $160,000; that during that time there were four different Secretaries of the War Department, and that each of them insisted on referring the matter to various officials, including several different committees of Congress, the Attorney General and the Treasury Department; and with each
391 successive change of administration, as the claim became more stale, the prejudice against the appropriation increased, and the difficulty of collecting it became greater, until the last change in 1895; that during that period there were ten different sections of Congress and five different Houses of Representatives and at nearly every session of Congress the persons who sought to extort money from this defendant, as aforesaid, succeeded in getting resolutions introduced directing enquiry to be made into the said appropriation and obstructing it meantime, and having these resolutions referred to committees of Congress, which either investigated the whole matter anew or adopted the conclusions of previous committees recommending a reduction of the appropriation to fifty thousand dollars, and in this manner much of the work of prosecuting and perfecting the said claim had to be done over repeatedly from the beginning to the end. That for these purposes this defendant was compelled to employ attorneys and counsel, including especially Shearman & Sterling of New York and John A. Garver, of that firm, who visited Washington repeatedly; James R. Cox of Auburn, N. Y., who remained one entire winter there for the sole purpose of prosecuting the said claim; James Lowndes, of Washington; Shellabarger & Wilson, of Washington; Dudley and Michener, of New York; James A. Lancaster of Washington, and others; that the

said Thomas Carson visited Washington many times upon the same business exclusively, and spent almost two years there, solely upon that business, and all the expenses incurred thereby were defrayed by this defendant; and more than fifty thousand dollars of such necessary expenses paid as aforesaid, were actually paid out of the said sum of $160,000, and were not paid until it had been actually collected.

That this defendant fully realizing that all of his said expenditures would come practically out of his own pocket, was extremely economical and careful in making them, and did not expend or suffer to be expended, one dollar beyond what was absolutely
392 necessary and indispensable to success in enforcing the just claims of himself and the said Thomas Carson as administrator to the said fund, and especially it was understood between this defendant and his attorneys and counsel, Shearman & Sterling of New York, including the said John A. Garver, that they would make no charge for their services unless the said appropriation was actually collected.

II. Answering to the second interrogatory, this defendant says that he has never seen the original of the agreement of July 13, 1887, that it is not now and never has been in his possession, and that this defendant does not know what was done with it after its execution, except that he was informed that it was delivered to James R. Cox.

Wherefore, the defendant prays that the plaintiffs' original bill of complaint and amended bill may be dismissed and their prayer denied, and that this defendant may be hence discharged with all of his costs in this behalf most wrongfully sustained.

JAS. STILLMAN.

——— ———,
——— ———,
Solicitors under Limited Appearance
for Defendant James Stillman.

STATE OF NEW YORK,
Southern District of New York, } *ss.:*
County of New York,

Personally appeared before me, Cornelius A. Loughlin, a notary public in and for the said county, district and State, duly commissioned, qualified and acting, James Stillman, one of the defendants named in the foregoing answer who, after being by me duly sworn, stated on his oath, that he is one of the defendants named in the foregoing answer; that he has read the same and is advised of the contents thereof, and that the allegations contained in the
393 said answer, which refer to his own acts are true, and those allegations which refer to the acts of others he believes to be true.

JAS. STILLMAN.

Sworn to and subscribed before — this 21st day of February, 1899.

[SEAL.] CORNELIUS A. LOUGHLIN,
Notary Public, New York County, N. Y.

EXHIBIT A.

This contract, made and entered into by and between J. B. Wells, attorney at law, of the city of Brownsville, State of Texas, of the first part, and E. M. Hill, attorney at law, of the city of Washington District of Columbia of the second part, witnesseth:

That the said party of the first part is the agent and attorney in fact for the collection of certain moneys due and appropriated by the Government of the United States to the heirs and assigns of Paredes and Salinas, residents of the State of Texas, which agency and attorneyship is evidenced by certain powers of attorney now on file in the said case; and the said party of the first part, desiring to secure the services of the said Hill and his associates in procuring the payment of said moneys, agrees for himself and his principal to pay the said party of the second part ten per cent. of any and all sums that may be paid to him as agent for the above named parties out of the appropriation now made to pay for the Fort Brown reservation, the said party of the second part and his associates agreeing to give their best professional services to secure the payment of the money claimed at the earliest possible day, and to do all acts necessary and proper to be done by attorneys in said case.

The said party of the first part further agrees that in
394 the event of the collection of the money appropriated to pay for the Fort Brown reservation, that he will protect General J. Hale Sypher in securing the fee of $5,000 for services secured by said Sypher in the passage of said appropriation; it being further agreed that should the said $5,000 fee be paid entirely by said Wells, then the sum is to be deducted from the said ten per cent.

Signed this 19th day of January, 1886, in the city of Washington, District of Columbia.

JAMES B. WELLS, Jr.,
Agent and Attorney in Fact for Assigns of Paredes and the Heirs and Assigns of Miguel Salinas.

EXHIBIT B.

THE STATE OF TEXAS, }
County of Cameron. }

Whereas on the thirteenth (13) day of July, A. D. 1887, we the undersigned, James Stillman, Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, Mrs. Charlotte Miller, Henry Miller, B. O. Hicks and C. B. Combe, executor of the will of Stephen Powers, deceased, B. O. Hicks, guardian of the estate of Frances E. Powers, Kate M. Combe and C. B.

Combe, B. O. Hicks and Annette P. Hicks, Mat Gerhard, Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Charles S. Dana, and Marie Grogan Dana, Francisco Yturria, Juan Salinas, H. E. Woodhouse, Agnes A. Browne and James A. Browne, as owners and claimants of the military reservation of Fort Brown, at Brownsville, Cameron county, Texas, did enter into an agreement for the purpose of facilitating the collection from the United States Government and the distribution among the true owners thereof of the appropriation of one hundred and sixty thousand dollars ($160,000) made by
395 the said Government for the purchase of the said Fort Brown military reservation, a copy of which agreement is hereto attached and made part hereof for greater certainty;

And whereas, in and as a part of said agreement, it is stipulated that the sum of $20,000 will, upon the collection of said appropriation, be due and owing to certain agents at Washington who assisted in procuring the said appropriation, who must first be paid from said fund when received, and that the said sum shall be paid by the arbitrators therein named, when collected by them, to said agents at Washington;

And whereas, owing to many and insurmountable obstacles, said appropriation nor any part thereof has been collected and still remains in the Treasury of the United States;

And whereas, in the efforts already made and to be made to collect said appropriation, a much larger sum will be necessary than the said sum of twenty thousand dollars ($20,000) as mentioned in said agreement, to pay persons employed in making said collection;

And whereas, it is believed that the further sum of $25,000 in addition to said sum of $20,000 mentioned in said agreement will be necessary to be expended in the collection of said appropriation;

And whereas, it is for the interest of all of the parties hereto that the said appropriation should be collected as soon as possible and distributed among the persons entitled thereto;

It is, therefore, now here, in consideration of the premises, agreed by each and all of the undersigned, and each of them does hereby mutually agree and covenant with the other as follows, towit:

First. That in addition to the sum of twenty thousand dollars ($20,000) mentioned in said agreement as being due to agents and for expenses, the arbitrators shall be at liberty, upon the collection of said appropriation to, and shall if necessary, pay the further sum of not exceeding twenty five thousand dollars ($25,000) to
396 any such agents and for any such purposes as may be necessary to collect said appropriation, it being however, expressly provided that no part of said sum of twenty-five thousand dollars ($25,000) due from anyone *or* be paid by said arbitrators to anyone until said appropriation of one hundred and sixty thousand dollars ($160,000) is actually and finally paid by the Government to the parties hereto, their arbitrators, agents or attorneys, and shall only become due and be paid out of the said appropriation when actually collected by and through the efforts and services of the said agents

to whom said additional sum, or the necessary part thereof, is to b paid, and upon full account and voucher submitted to the partie hereto, their agents, attorneys or arbitrators, and found satisfactor and correct and approved by them.

Second. That nothing in said original agreement or herein co tained shall ever be so construed as to give such agent or othe person employed or in any manner instrumental in the collection o said appropriation, any lien or claim whatsoever in law or equity t said appropriation or any part thereof, or any claim or demand o any nature whatsoever against any of the parties to said origina agreement or hereto.

Third. That these presents shall in all things be construed as sup plemental to and forming part of the said original agreement herein The erasure with red ink of the word "believed" appearing on th twenty-sixth line of the second page of this instrument was made before signing.

In witness of all of which, witness our and each of our signa tures interchangeable set hereto, in duplicate, this the nineteenth (19th) day of October, A. D. 1889.

Witness CHARLES S. DANA AND
MARIE GROGAN DANA, *His Wife,*
By JAMES B. WELLS, *Their Attorney.*
THOMAS CARSON,
Administrator with the Will Annexed of the Estate of Maria Josefa Cavazos, Deceased.

397 C. B. COMBE,
Sole Executor of the Last Will and Testament of Kate M. Combe, Deceased.
ANNETTE P. HICKS,
By E. KLEIBER, *Her Attorney in Fact.*
FANNIE E. POWERS,
By E. KLEIBER, *Her Attorney in Fact.*
AGNES A. BROWNE.
JAMES A. BROWNE.
FRANCISCO YTURRIA.
JUAN SALINAS,
By FRANCISCO YTURRIA,
His Attorney in Fact.
CHARLOTTE MILLER,
By W. H. MASON, *Her Attorney.*
HENRY MILLER,
By W. H. MASON, *His Attorney.*
MATT GERHARD,
Per JAMES B. WELLS, *His Attorney.*
FELICITA SALINAS,
Per JAMES B. WELLS, *Her Attorney.*
ANDREA SALINAS,
Per JAMES B. WELLS, *Her Attorney.*
R. D. HINOJOSA,
Per JAMES B. WELLS, *His Attorney.*

Endorsed: Circuit court of the United States for the western district of Texas. In equity. No. 21. C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, and others, complainants, against James Stillman, impleaded with Thomas Carson and others, defendants. Answer of James Stillman. Frarrar, Jones, Kruttschnitt & Gurley, solicitors under limited appearance for James Stillman. Filed March 6th, 1899. D. H. Hart, clerk, by Chas. F. Tighlman, deputy.

398 In Circuit Court of the United States in and for the Western District of Texas, at San Antonio Sitting.

C. B. COMBE, Executor Estate of Stephen Powers, Deceased,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

The joint and several answer of Thomas Carson, administrator of the estate of Maria Josefa Cavasos, deceased, and of Thomas Carson individually, to the bill of complaint and amended bill of complaint.

Said defendant- now and at all times hereafter-saving and reserving to *himself* all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint and amended bill of complaint contained, and specially reserving and insisting upon their pleas to the jurisdiction and their pleas in abatement herein and their demurrers and exceptions, for answer hereunto or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, answer and say:

I.

They admit that C. B. Combe is a citizen of the State of Texas, and resident of the county of Cameron in said State, but they deny that the said C. B. Combe is independent executor of the estate of Stephen Powers, deceased, as heretofore fully denied in the plea in abatement filed herein, and aver that the said C. B. Combe is no longer independent executor of the said Stephen Powers, deceased, but that in truth and in fact long before the filing of the bill herein the said C. B. Combe had fully administered his trust as said independent executor of said estate and his powers as such had ended and he had in truth and in fact ceased to be such long prior to the filing of said bill of complaint herein.

399 They admit that H. E. Woodhouse is a citizen of the State of Texas and a resident of Cameron county, Texas, and was such at the time of the filing of said bill of complaint. They do not know whether Leocardio Salinas, Antonio Salinas, Melchor Sa-

linas, Bernardo Salinas, Hijinio Salinas, Alejandro Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, and R. D. Hinojosa, all or any of them, are citizens of the State of Texas, and residents of Cameron county, Texas, but they are informed that each and all of said last named defendants are citizens of the State of Texas and residents of Cameron county, Texas, and were such at the time of the filing of the bill of complaint. They admit that Francisco Yturria is a citizen of the State of Texas & resides in Cameron county Texas & was such citizen & resident at the time of the filing of the bill of complaint herein. They do not know whether Henry Miller is a citizen of the State of Illinois and was such at the time of the filing of the bill of complaint herein, but they are informed that he was such citizen and is now such citizen and did then and does now reside in Cook county, State of Illinois. They do — know that Charlotte Miller was a citizen of Texas and a resident of Cameron county, Texas, at the time of the filing of said bill of complaint and now, nor that Matt Gerhard was a citizen and resident of the State of California when said bill of complaint was filed and now, nor that Charles Dana and Marie Grogan Dana were citizens and residents of the State of Massachusetts when said bill was filed and now, but they are informed that they were such citizens and residents and are such citizens and residents. They admit that James Stillman was a citizen and resident of the State of New York at the time of the filing of this bill and still is a citizen and resident of said State of New York.

II.

They admit that on or about May 1st, 1846, Zachary Taylor, then a brigadier general of the Army of the United States and commanding a military force of the United States Army in the State of Texas, entered upon and took possession of that certain tract of land described in subdivision three of complainant's bill of complaint herein and established thereon for the United States a military force, garrison and reservation and occupied the same by and with an armed military force of the United States, and that the said land is on the Espiritu Santo grant and now known as the "Fort Brown military reservation." They admit that from the said first day of May, 1846, the whole of said tract of land was in actual possession and occupied by the United States Government as a military reservation, but they specially aver that same was occupied by said Government not under claim of ownership thereto, now as the property of said Government, but as the property of Maria Josefa Cavasos, whose title thereto was, at the time of the rendition of the judgment in the suit No. 248, entitled "Heirs of Miguel Salinas *vs.* Wm. L. Kellog *et al.*" set out in complainant's bill of complaint, *was*
400 one half in defendant James Stillman and the other half in the estate of said Maria Josefa Cavasos, then deceased.

III.

Defendants admit that at the time the said military force took possession of said tract of land that the same was private property; but the- deny that the same, or any part thereof, belonged at said time to Miguel Salinas and others; and they specially aver that the whole of said tract of land at said time belonged to the said Maria Josefa Cavasos, and that since then one-half of same has become the property of the defendant James Stillman and the other half remained in the estate of the said Maria Josefa Cavasos, up to the time of the conveyance to the United States Government, referred to in the original bill of complaint herein. They admit that no compensation was ever paid by said Government for said lands except the compensation paid under the act of Congress referred to in the said bill, and that no title was ever acquired thereto by the United States except the title conveyed by the said James Stillman and the said Thomas Carson as administrator of the estate of Maria Josefa Cavasos, deceased, by the conveyance referred to in the said bill of complaint.

IV.

They deny that Stephen Powers in his life time, for a valuable consideration, or otherwise, acquired any legal or equitable title of any character whatsoever to an undivided one-half of the said lands known as the "Fort Brown military reservation," or any portion thereof, by any chain of title whatsoever, as will be more fully and specifically shown hereafter in this answer.

They admit that the said Stephen Powers died on the 5th day of February, 1882, but deny that he died lawfully seized in fee simple, or otherwise, of an undivided one half of said land, or any part thereof. They admit that the said Stephen Powers executed a last will and a codicil thereto prior to his death, and that the said will and codicil were on the 30th day of March, 1882, duly admitted to probate in the probate court of Cameron county, Texas, and that the certified copy of said will and codicil and the probate thereof attached to complainant's bill as Exhibit "A" are true copies. They admit that in and by said will and codicil the said Stephen Powers devised an undivided one half of all his lands in fee simple, share and share alike, to his two daughters and two step daughters, viz; Agnes Anastacia Powers, wife of J. A. Browne of Cameron county, Texas, Frances Euphemia Powers, wife of
401 J. A. Landrum of Cameron county, Texas, Annette Pauline Impy, who was the wife, of B. O. Hicks, deceased, of Cameron county, Texas, and Kate Maria Impy, who is now deceased, but who was in her life time the wife of complainant C. B. Combe. They deny, however, that any part of the land known as the "Fort Brown military reservation" was devised or bequeathed by the said Stephen Powers, for as hereinbefore averred the said Stephen Powers had no interest therein now title thereto. They further admit that in

said will and codicil said Stephen Powers nominated and appointed C. B. Combe a*b*d B. O. Hicks as independent executors thereof and exempted them from bond and directed that no action should be taken by the probate court upon his estate except to probate his said will and that his executors should file a*n*d inventory and appraisement of his said estate, and they admit that said inventory and appraisement was filed by said executors in due form of law, but they deny that there was probably embraced in said inventory and appraisement any part or portion of the land known as the "Fort Brown military reservation." They admit that on the 7th day of April, 1882, complainant and B. O. Hicks duly and legally qualified in the probate court of Cameron county, Texas, as independent executors of said will and that the certified copy of said qualification attached to complainant's bill and marked Exhibit "B" is a correct copy. They admit that the said plaintiff and B. O. Hicks entered upon the discharge of their duties as such executors and continued to jointly administer same under said will, until their trust was fully and finally executed, as is more fully alleged and set forth in these defendants' pleas in abatement, filed herein. They admit that the said B. O. Hicks died sometime in November, 1887, but deny that the complainant continued to administer said estate as sole and independent executor and that he was at the filing of complainant's bill such independent executor; but they specially aver that his powers as such executor had been exhausted and his trust fully administered, long before the filing of complainant's bill, as is more fully shown by defendants' pleas in abatement heretofore filed herein, and that he had ceased to be independent executor, long before the filing of said bill of complaint.

V.

Defendants deny that from May, 1st. 1846, down to the time of the filing of complainant's bill, all persons and estates named as parties to this suit, as well as the persons and estates under and through whom they claim, have in various ways asserted claim to parts of the aforesaid tract of land known as the "Fort Brown military reservation" and have sought payment for the same and
402 the use and *and* occupation thereof from the Government of the United States, and aver the facts to be: That from May 1st, 1846, Maria Josefa Cavasos, dec'd, and those holding titles and estates through and under her, down to about the year 1880, were the only persons and estates named as parties to this suit who in any way asserted claim to the said "Fort Brown reservation, or any part thereof and sought payment for the same and for the use and occupation thereof from the Government of the United States during such period of time; and they aver that no such claims were ever asserted by any other persons or estates, named as parties to this suit until the filing of the suit of Salinas *vs.* Kellog on June 29th, 1886, except that at divers times, subsequent to about the year 1880,

other parties to this suit made some general and indefinite and pretended claims for compensation from the United States Government; none of which claims had any foundation in law or equity and none of which were ever recognized admitted or allowed by any of the defendants herein, or by any of those under whom they claim, or by the said Government of the United States. They admit that on the 3rd day of March, 1885, the Congress of the United States passed an act, making an appropriation in the words set out in paragraph *VI* of complainant's original bill.

VI.

They admit that on June 9th, 1886, the defendants Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, and Juan Salinas, as the heirs of Miguel Salinas, deceased, filed this suit against William L. Kellog who was then a colonel in the United States Army commanding officer of said Fort Brown reservation, in the district court of Cameron county, Texas, to recover the title and possession of a part of said Fort Brown reservation and for rents and for use and occupation being suit No. 1458 on the docket of said court, and that that part of said reservation claimed in said suit was as described in paragraph VII of complainant's original bill. They admit that on June 30th, 1886, that the defendant H. E. Woodhouse filed in said cause his petition of intervention, claiming to be the owner of the undivided interest of Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, and Bernardo Salinas in the lands so described; it being asserted in said petition of intervention that they had inherited said land from
403 Miguel Salinas; but it is not admitted that they did inherit said land, but these defendants specially aver that the said Woodhouse did not in truth and in fact own the land so claimed in said intervention, or any part thereof. They also admit that on October 28th. 1886, said Wm. L. Kellog obtained an order removeing said suit to the United States circuit court for the western district of Texas at Brownsville, Texas, and that on November 23rd. 1886, a transcript of all proceedings in said suit in the district court of Cameron county was filed in the United States circuit court at Brownsville, and said suit was entered upon the law docket of the United States circuit court, being "No. 248, Heirs of Miguel Salinas *vs.* Wm. L. Kellog," and that it was proceeded with as a suit pending *pending* therein. They further admit that on December 27th. 1886, Rudolph Kleberg, United States district attorney for the western district of Texas, by instruction of the United States Government appeared in said suit "No. 248, Heirs of Miguel Salinas *vs.* Wm. L. Kellog" and intervened for the United States and made them parties defendant therein and filed answers for said Kellog and the United States, and among other things pleaded not guilty and set up outstanding title to Fort Brown reservation in Pedro G.

Cavasos, James Stillman, Thomas Carson as administrator with the will annexed of Maria Josefa Cavasos, deceased, Charles S. Dana and his wife Maria Grogan Dana, H. E. Woodhouse, Francisco Yturria, Matt Gerhard, Charlotte Miller, and also the heirs of Stephen Powers, deceased. They further admit that in said answer the said United States district attorney prayed that all of the said persons be made parties defendants in said suit in order to reach a final adjudication of the true title to said Fort Brown reservation; that on January 6th, 1887, said district attorney filed in said case a formal motion to make the above named persons and the heirs, devisees and executors of Stephen Powers deceased, and some others, parties defendants in said suit, which motion was sustained by the court, and citation was issued to some of said new made parties defendant; and that defendants James Stillman and Thomas Carson, as administrator of the estate of Maria Josefa Cavasos, deceased, and some others, waived process and service in said suit No. 248, and voluntarily entered their appearance and filed therein answers and pleas in reconvention. They admit that on July 11th, 1887, the said James Stillman filed his answer and plea in reconvention, in said suit No. 248, in and by which he claimed to be the owner in fee simple of
404 an undivided one half of the whole of said Fort Brown reservation and made averments in said answer deraigning title. That in said intervention said Stillman alleged that neither the plaintiffs, intervenors nor defendants owned any interest in said reservation, except the estate of Maria Josefa Cavasos, deceased, represented by the defendant Thomas Carson, as administrator, and that he, said Stillman, alleged that said Carson as such administrator owned the other undivided one half in fee simple; that on said date, July 11th, 1887, the defendant Thomas Carson, as administrator of the said Cavasos estate, with the will annexed filed his answer and plea in reconvention, in said cause No 248, in and by which he claimed that said estate owned one individual half of said Fort Brown reservation, in fee simple, and denied that any of the plaintiffs, intervenors or defendants in said suit owned any part of said reservation, except said defendant James Stillman, who, he alleged, owned the other undivided one half of the said reservation, in fee simple; and in said intervention the said Thomas Carson made averments deraigning the title of said estate to said land. That the said James Stillman and Thomas Carson, as aforesaid, in their interventions and answers, alleged and claimed that said James Stillman and the said estate of Cavasos owned the whole of said Fort Brown reservation, in fee simple absolute, and also the rents and compensations owing by the United States Government for the use and occupation thereof, from May 1, 1846, to the date of filing said answers and interventions. They admit that on July 12, 1887, complainant and B. O. Hicks claiming to act as independent executors and representatives of the estate of Stephen Powers, deceased, and Charles S. Dana and his wife Marie Grogan Dana filed their joint answer and plea in reconvention, in said suit No. 248; in and by

which they alleged and claimed that the said estate of Stephen Powers, deceased, and Marie Grogan Dana owned an undivided one half of said Fort Brown reservation, and made averments therein by which they undertook to deraign title to said premises; that on July 14, 1887, defendants Charlotte Miller and Henry Miller filed their answer and plea in reconvention, in said suit No. 248, in and by which they averred that they were the owners of the parcel or portion of said Fort Brown reservation, described by metes and bounds in paragraph VIII of said original bill of complaint. That on July 13, 1887, the said R. D. Hinojosa filed his answer in suit
405 No. 248, in and by which he alleged that he was the owner of the interest in said Fort Brown reservation inherited by Vicente Salinas from his ancestor Miguel Salinas; that on July 12, 1887, the said R. D. Hinojosa filed his answer in said suit No. 248, in and by which he alleged that he was the owner of the interest in said Fort Brown reservation inherited by said Vicente Salinas from his ancestor Miguel Salinas; that on July 12, 1887, the defendants Francisco Yturria, Matt Gerhard, Andrea Salinas and Felicita Salinas filed their joint answer and plea in reconvention, in said suit No. 248, in and by which they claimed that they were the owners of an undivided portion of 22½ acres of said land so sued for by the heirs of Miguel Salinas; that on July 13, 1887, the said Pedro G. Cavasos filed in said suit No. 248, his answer and plea in reconvention, alleging that he was the executor of the last will and testament of his mother Maria Josefa Cavasos, deceased, and that her estate owned an undivided one half and defendant James Stillman owned the other undivided one half of said Fort Brown reservation. They admit that said Pedro G. Cavasos is now dead and that he never at any time qualified as such executor, and that the said Tomas Carson in said suit No. 248, represented said estate as lawfully qualified administrator with the will annexed, and has constantly since then so represented said estate of Maria Josefa Cavasos, deceased, as fully as he could under the laws of the State of Texas. These defendants further admit that on April 26, 1887, the parties to said suit No. 248, made in writing and filed with the papers therein a certain agreement, showing common source of title of all of the parties to said Fort Brown reservation and that the copy of said agreement attached to complainant's original bill and marked Exhibit "C" is a true copy thereof.

VII.

These defendants admit that the said act of Congress, appropriating the sum of $160,000.00 to pay for Fort Brown reservation and to extinguish the claims for its use & occupation provided that no part of that fund should be paid out until the complete title to said property should be vested in said United States, and that the full price for said land and the rents and compensation for its use and occupation should be directly paid to the owners of the property.

They aver, however, that said act is unambiguous in its
406 terms; and the true intendment and meaning thereof is clearly expressed therein; and further than this these defendants cannot aver with reference to said act.

VIII.

These defendants deny that the pleadings in said suit No. 248, presented to the court for its examination, consideration and adjudication, made a case of facts and law of intricacy, difficulty and complexity, requiring great skill, labor, care, patience and perhaps years of litigation for its final solution; but they aver that said action was one of trespass to try title; and the only matters involved herein were the rights of the respective parties to said suit in and to the said Fort Brown reservation and the rents and revenues arising therefrom. These defendants deny that without some compromise or agreement whereby an indefeasable title to said property could be established, there was great danger that said appropriation could not be made available or would be ultimately consumed in litigation and in some manner lost to the owners of the property; and they aver that the said estate of Maria Josefa Cavasos, deceased, and the said James Stillman, were the real owners at said time of said property; and a final adjudication upon a hearing in said cause would have established said fact and fully established their right to the whole of said appropriation. That it is true that, in view of the very great number of persons claiming an interest in said property the nature of the facts and circumstances upon which the alleged titles were based, the ancient character of some of the alleged titles, the frequent and complicated character of some of the transfers of said property, the nature of the controversy between the United States and the owners and claimants of said property and the number of deaths and descents cast and devises made among some of the complainants to said property, divers questions of law arose upon the facts; and that it was important, in order to make such title to said property as was required by the United States Government, that the said suit No. 248, should be finally disposed of: but these defendants deny that it was impossible to make a valid title to said property except through the judgment of said court, for in truth and in fact the said
James Stillman and the said estate of Maria Josefa Cavasos,
407 deceased, owned in fee simple title all of said property; and a conveyance by them to the United States Government would have vested in said Government a complete and perfect title to said property. Defendants deny that, when the issues were fully made up in said suit the parties thereto and their attorneys and counsel became impressed with the difficulties hereinbefore alleged and the great importance and necessity of removing them and became and were exce-dingly desirous of agreeing upon some plan, whereby a valid title to said reservation would be immediately vested in the

United States Government in and by means of a judgment of this court, in said suit, followed by proper conveyance, with a view of having the real issues made by the pleadings settled after the title to the reservation should be vested in the United States and the said appropriation secured to those parties who should thereafter be found entitled to receive the same; but in truth and in fact the said James Stillman and the said Thomas Carson, as administrator of the estate of Maria Josefa Cavasos, deceased, knew at said time that they had good, complete and perfect title to said Fort Brown reservation, but that the pretended claims asserted by the other parties to said litigation were to some extent clouding their said title; and they desired a prompt trial of all matters involved in said suit, so that their title might be fully recognized and established and cleared of said clouds by the judgment of said court; and they knew that this would be the result of a trial of the issues in said suit in said court, and that all that they desired in said suit was a prompt and speedy trial of the issues therein involved so that said result might be arrived at.

IX.

Defendants admit that on July 13, 1887, the said defendants James Stillman, Thomas Carson, Henry Miller, Charlotte Miller, Matt Gerhard Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Chas. S. Dana, and his wife Marie Grogan Dana, Francisco Yturria, Juan D. Salinas, H. E. Woodhouse, B. O. Hicks and complainant as independent executors of Stephen Powers, deceased, and other parties to said suit No. 248, entered into a certain written agreement, a copy of which said agreement is attached to complainant's original
408 bill and marked Exhibit "D" and which said copy is a true and correct copy of said agreement. That said agreement is plain and unambiguous and will be submitted to the court for its construction; and these defendants do not admit the legal conclusion sought to be drawn therefrom by complainant in paragraph VIII of his original bill, but will submit the construction of said instrument to this court.

X.

These defendants deny that a formal trial of said suit No. 248, was had in this court; but they aver that said cause was duly submitted to a jury for the purpose of obtaining their verdict and decision thereon, all the parties to said suit not being parties to said agreement. They further aver that it is not true that on said trial no evidence was offered upon the issues raised in the pleadings, in regard to the respective rights and claims of the said parties to said suit, and that the same were not in said trial contested or litigated, and that in the same a verdict was rendered in each suit by consent only as set out in paragraph XI of complainant's original bill; for in truth and in fact there were other parties to said suit, besides those signing said agreement; and, as will appear by the judgment

rendered in said suit, the same was had upon hearing; and in truth and in fact said agreement was not filed in said suit nor was the attention of the court called to same, and same never became in any way a file paper in said cause. Defendants admit that in said suit a verdict was found by the juries as copies into paragraph XI of complainant's original bill; that said verdict was received by the court and filed with the papers in the case, and that there was entered a judgment in said suit No. 248 in the words and figures set out in said paragraph XI of complainant's original bill as Exhibit "E" is a true — thereof.

XI.

These defendants deny that the title to said land and rents was by said judgment vested in said defendant James Stillman and Thomas Carson as administrator of the estate of Maria Josefa Cavasos, deceased, in trust for the use and benefit of all or any of the parties to said suit No. 248 and for the use and purpose
409 stipulated in said agreement of date of July 13, 1887, And they deny that said defendants Stillman and Carson accepted the title to the said property as trustees, or with any understanding on the part of themselves and all other parties to said suit and the court that rendered the judgment, that they should receive the same in trust, for the benefit of all of the said parties, and that they might be able to convey a good and valid title to the same and to the Government of the United States in order to and thereby secure from the United States the said fund of $160,000.00 and have it, less the 20,000.00 to be paid to agents at Washington, deposited to the credit of the said arbitrators in the bank of Ball, Hutchings and Company at Galveston, Texas, and there remain until said arbitrators could determine the conflicting rights and claims of said parties to said property and then to be paid to the persons found by said arbitrators to be the owners of said lands and funds, as aforesaid; and they deny that the right and claims of said parties in and to said property were not adju-icated in and by said judgment and that there was no pretense upon the part of any party to said suit and judgment that any of said rights were adjudicated therein, and that it was agreed or understood by all the parties thereto that the title to said property was by said judgment placed in James Stillman and Thomas Carson in trust as aforesaid. They specially aver that in truth and in fact said judgment, was a final judgment in all respects settling the title to said real estate and finally decreeing same to be one half in the said James Stillman and one half in the said Thomas Carson as administrator of the estate of Maria Josefa Cavasos, deceased, and that it was the real intent and purpose of all parties signing said agreement that said judgment should be a final and conclusive judgment in said suit, absolutely and finally and conslusively decreeing an absolute and unincumbered title to the said land in the said James Stillman and the said Thomas Carson as administrator aforesaid. These defendants aver that the said agree-

ment was a separate and independent agreement, having reference solely to the funds that might be collected from the United States Government under the said bill appropriating same, nor of any party thereto, that the land so decreed to said Stillman and to said Carson, as administrator, should be held otherwise that in complete and perfect title; and these defendants crave to refer to said
410 agreement, which is plain and unambiguous, and submit same to the construction of this court.

XII.

Defendants admit that on or about April 26, 1895, the said James Stillman and Thomas Carson, as administrator of the estate of Maria Josefa Cavasos, deceased, delivered to the Secretary of War of the United States their deeds and release, which they had executed in due form of law, vesting in the United States of America a good and valid title to the Fort Brown reservation and releasing them from all claim for use and occupation thereof since May 1st, 1846; but they deny that same was done pursuant to the agreement of July 13, 1887, and the judgment of July 14, 1887, and they aver that the same was done in order that the said fund of $160,000.00 might be thereby collected and the title to the said premises placed in the United States Government. They admit that the copies of said deed and release attached to complainant's original bill and marked Exhibit- "F" and "G," respectively, and made a part of said bill, are true copies of said deed and release. They admit that, in consideration of the execution and delivery of said deed and release, the United States of America on April 26, 1895, paid to defendant James Stillman the sum of $160,000.00, which had been theretofore by the Congress of the United States of America appropriated to pay for the Fort Brown reservation, and to extinguish all lawful claims for the use and occupation thereof but they specifically deny that these defendants ever collected or received any portion of said sum of $160,000.00. They further specially deny that any portion of said sum of money was ever paid by said United States Government in consideration of said agreement of July 13, 1887 or in consideration of the rendition and entry of said judgment of July 14, 1887, the said Government never having been any party to said agreement, the said judgment being merely evidence satisfactory to said Government that the title to said premises was in the said James Stillman and the said Thomas Carson, as administrator as aforesaid. These defendants further deny, that they or the said Stillman ever received said sum of $160,000.00 or any part thereof, in trust or otherwise, for and on behalf of all
411 of the claimants to said Fort Brown reservation who were parties to said suit No. 248, and for the ultimate use and benefit of all such claimants as should thereafter be ascertained, decided, determined or adjudged to be the owners of said Fort Brown reservation, prior to and at the time of the entry of said judgment,

and the "owners of said fund as to the proceeds, avails and representative of said land and compensation for the use and occupation thereof since May 1, 1846." And these defendants deny that they ever fraudulently concealed from plaintiff and all other claimants to said land and fund the fact that they had collected the same, for in fact they had not collected the same nor any part thereof; and they deny that they ever fraudulently appropriated or converted the whole of said fund of $160,000.00 to their own use and benefit, or any part thereof; and they deny that they are now fraudulently using said judgment of July 14, 1887, for the purpose of defrauding all the other claimants out of any benefit of said judgment and for the purpose of defrauding them out of their interest in said fund and their claim and right to said land; and they further deny that they and said Stillman are conspiring with each other or with other persons, for the purpose of fraudulently preventing and defeating a decision and settlement of the aforesaid conflicting claims to said lands and fund and a destribution thereof to the true owners by arbitration, as provided by said agreement, or by this court or in any other manner; and they deny that they and the said Stillman or they and any one else are fraudulently using said judgment to deprive the true owners of said property out of their just and lawful compensation therefor, contrary either to equity or to the act of Congress making said appropriation, or to the said agreement of said parties. They admit that Mr. Ballinger, one of the arbitrators named in said agreement, is dead and that Mr. Culberson, another of the arbitrators named therein, has declined to act; but they deny that they have declined to proceed to supply the places of said arbitrators or to proceed with the arbitration as provided for in said agreement; and they specially aver that in truth and in fact by the terms of said agreement they have no right, power or authority to appoint a new arbitrator not to carry said arbitration into effect. They deny that they refused to account for said
412 fund of $160,000.00, but they aver that they have refused to recognize any of the claims, except that of James Stillman, to said fund: for in truth and in fact said claims are without foundation in law or in equity; and none of the parties to said agreement, except the said Stillman and the said Carson, as administrator as aforesaid, has *no* claim or title to said fund, or any portion thereof; and they reiterate their former averments that no portion of said fund has ever come into their possession, and that they are without power to supply said arbitrators and carry on said arbitration, in order to demonstrate that the said James Stillman and the said Thomas Carson as administrator aforesaid are entitled to the whole of said $160,000.00. They deny that they have declined and refused to deposit said fund, or any part thereof, in the bank of the said Ball, Hutchings and Company of Galveston; because as heretofore averred, they have never had any of said fund in possession so that same might be so deposited. They further deny that they have secreted said fund and refused to give the plaintiff and the other

claimants any information whatsoever concerning the same. They further aver that they do not know and have no information as to what prompted complainant herein to consent to said agreement of July 13, 1887, and the said judgment of July 14, 1887. They deny that they and the said Stillman are, under and by virtue of said agreement and judgment, or otherwise, trustees of this court, and that by virtue of the power and trust confided in them by the judgment of this court and by virtue — obtained possession of the said fund of $160,000.00; and they deny that they are accountable to this court in any way for the same, and they deny that they should be compelled by this court to make any account of said fund.

XIII.

These defendants deny that the conflicting claims to said land and the various issues raised in regard thereto, in said suit No. 248, are now and remain wholly unde-rmined, undecided and unadjusted, as averred in paragraph XIV of complainant's original bill and with reference to the said $160,000.00 referred to in said paragraph XIV. As to said fund, these defendants aver that the said agreement of July 13, 1887, is plain and unambiguous and
413 will be submitted to this court for its construction; and as will be herein after more fully shown, neither the complainant herein nor any of the other parties to this suit, except James Stillman, have an interest whatsoever in said fund; and these defendants
414 specially aver that the said alleged fund was not involved in said suit No. 248, and the disposition of same formed no issue therein, and that naught was involved in said suit except the question of title to the lands therein sued for and the question of rents therein sought to be recovered, as is shown by the record and the pleadings in said suit No. 248, to which reference is made for greater certainty. These defendants deny that the estate of Stephen Powers, deceased, is entitled to one half of said alleged fund with interest thereon from April 26, 1895, or to any portion thereof; and they aver that, if the other persons and defendants herein are now claiming an interest in said fund proportionate to their respective claims to Fort Brown reservation, as shown by their respective pleadings in the former suit, these defendants are not apprised of that fact, as none of said parties have as yet appeared herein and filed any pleadings herein or asserted any claim herein to any portion of said fund. They deny that either said Stillman or said Carson have by any wrongful act, or otherwise, defeated the said plan of arbitration or rendered it necessary that an application be made to this court for the continuation, completion and final adjudication of all of the issues raised in the matters partly litigated in the former suit on the law docket of this court and for an adjudication of the respective claims to said fund; and they specifically aver that neither they nor the said Stillman ever defeated said plan of arbitration, but that the same could not be carried into effect, because of the death of one

arbitrator, the resignation of another, and the practical declination to act of the third, and because neither they nor the said Stillman were authorized under said agreement to appoint new arbitrators and they could not require the other parties to said agreement to make such appointment or to make any new or additional agreement for an arbitration; and they again aver that all issues raised and all matters involved in the former suit on the law docket of this court being No. 248 were fully disposed of, settled and adjudicated in said suit, and that said litigation has finally and completely terminated.

415 XIV.

These defendants admit that the said Rudolf Kleberg, United States district attorney in and for the western district of Texas, appeared and intervened for the said United States in said suit No. 248; but they do not know and are not informed whether this was done by the direction of the Attorney General of the United States or not; and they admit that said district attorney caused said United States to be made parties defendant to said suit; but they deny that said district attorney for the United States was a party to said agreement of July 13, 1887. They admit that he did not sign same for the United States, and they deny that he consented to said judgment of July 14, 1887, for the benefit of said United States; and they deny that said United States have accepted the benefit of said agreement and judgment and upon the faith thereof and pursuant thereto paid over the said sum of $160,000.00. They aver that in truth and in fact, as hereinbefore averred, said agreement was not made with said United States Government, or anyone representing it, and was not relied upon by said United States Government in making said payment; and that said judgment was only relied upon by said United States Government in making said payment after the rendition of same and as evidence that the title to said property was as adjudicated by said judgment. These defendants deny that it was by virtue of the consent of the United States that said judgment divested out of the United States all title in and to said Fort Brown reservation and vested same in said Stillman and Carson, and deny that it was the understanding of all parties to said suit, their attorneys, solicitors, and counsel and the court that the title to said property should be vested in said Stillman and Carson in trust as aforesaid or for any other purposes. And these defendants aver that the United States Government in said suit did not assert title to said property as against the said James Stillman and the said Thomas Carson as administrator of the estate of said Maria Josefa Cavazos, deceased, and that there was no understanding had with the solicitors or counsel that the title to said property should be vested in Stillman and Carson for the purposes alleged in complainant's bill, or for any other purposes, and that said agreement was, *and* hereto-

fore averred, never filed in said proceedings, never entered
416 into by the said district attorney, never presented to the court and never used as a court paper or evidence during any stage of said litigation. These defendants further aver that the said original agreement of July 13, 1887, is not in their possession or under their control, and they have no knowledge as to where the same is, but they are informed that it is in the possession of James Stillman of New York.

XV.

These defendants say that they have no information as to who represented James Stillman in said former suit No. 248, except what appears upon the said agreement and the papers in said suit, which show that James R. Cox of New York and Ballinger, Mott & Terry, a law firm of Galveston, Texas, represented the said Stillman as his attorneys of record. That they admit that the said Ballinger is now dead and that the said Mott is an attorney and counsellor of this court and a citizen of the State of Texas, and resides in the city of Galveston. That they have no knowledge or information as to whether J. W. Terry is an attorney of this court, but they admit that he is an attorney at law and is a resident of Galveston, in the State of Texas. These defendants deny that the said Carson is the duly and lawfully authorized agent of said defendant James Stillman in Texas and represents their mutual interest in resisting all efforts of the said claimants to compel an accounting by them of said trust fund of $160,000.00. They aver that in certain business matters not connected with this litigation he represents certain interests in which the said Stillman is interested for the purpose of caring for properties, paying taxes, etc., but that he does not represent him as to any claim that he may have to the said fund of $160,000.00 or any part thereof. They say that they do not know, but they believe that in the former suit and agreement the complainant herein and B. O. Hicks, claiming to be executors of the will of said Stephen Powers, deceased, and the devisees of his said will were represented by their attorney and counsel Wells & Hicks, a law firm composed of J. B. Wells and B. O. Hicks. That said B. O. Hicks is now dead and that said Wells is a citizen of the State of Texas and resides at Brownsville. That they do not know, but they believe that Wells & Hicks also represented Matt Gerhard, Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Chas. S. Dana, and Marie
Grogan Dana and Francisco Yturria. That the information
417 upon which such belief is founded is that the said agreement was signed by said Wells & Hicks for said parties as attorneys in said suit. That the firm of Ballinger, Mott & Terry represented the said Thomas Carson, as administrator as aforesaid, in said suit at law. That they do not know, but they believe that Henry Miller and Charlotte Miller were represented therein by W. H. Mason as attorney. This belief is founded upon the information obtained from said agreement, which was signed by said Mason as attorney

for said parties, and also by the fact that he appeared for them in said litigation. That the said Mason is a resident citizen of Cameron county, Texas. These defendants admit that the said Thomas Carson has no property in this State except such as is by law exempt from seizure and sale under execution or attachment.

XVI.

That they nor either of them ever collected from the United States Government the sum of $160,000.00, or any part thereof, and have never received said sum of money, or any part thereof. That they are informed that the said sum of money was collected by the said James Stillman, and this information they derive mainly from the pleadings already filed in this suit by the said Stillman. That while it may appear that these defendants paid out of said fund the sum of $8,101.02 for taxes due upon said Fort Brown reservation, the fact is said sum of money was actually supplied to these defendants by James Stillman for the purpose for which it was paid, but whether said sum was a part of said $160,000.00 these defendants have no knowledge, but are informed and believe said fund was a part of such fund.

And further responding to the first interrogatory these defendants under oath state, that no part of the $160,000.00 referred to in the bill of complaint herein has ever at any time been received by these defendants or held under their control or direction.

This defendant Carson, administrator, attended in the city of Washington for nearly two years, attempting to collect the said sum from the Government of the United States, but did not succeed in so doing, and, therefore, being unable to remain longer finally executed a power of attorney to one John A. Garver of New York
418 city, and a member of the firm of Shearman & Sterling, attorneys of the city of New York. And these defendants say, that the said Carson could not alone either collect from or receipt to the Government of the United States for the appropriation or sum named, because under the title vested in the said James Stillman and Thomas Carson, and their deeds to the Government, the money was necessarily payable to James Stillman and Thomas Carson, administrator, jointly. The said John A. Garver was also acting at the time for James Stillman in the premises. That the defendant Carson, administrator, endeavored several times to obtain a settlement of the rights and interest in and to said fund on behalf of the estate of Maria Josefa Cavasos, deceased, and to secure a distribution of the sum named among the owners thereof in the premises, and visited the city of New York and remained there for some time working to that end; but owing to the pending litigation of H. E. Woodhouse and others, said Carson was wholly unable to effect any settlement or distribution or to obtain from the said Government any possession, control or disposition of the sum, or any part thereof, and has not been able to do so since, without any fault or omission

on his part. Out of the said amount appropriated the sum of $8,101.02, representing the taxes due upon said Fort Brown reservation, was actually paid at or about the time the appropriation was collected, and as a necessary condition precedent of obtaining the money; and these defendants are informed and they believe that more than $50,000.00 has been actually paid by James Stillman for expenses connected with obtaining and protecting the appropriation and collecting the money, to a large portion of which all of the parties hereto assented; but they did not contribute or offer to contribute anything whatsoever to the large amount of necessary expense incurred in the premises. That the said defendant Thomas Carson has not the original of said agreement of date July 13, 1887; that the same is not in his possession nor under his control, nor under the control of his agent or attorney, and was not when the original bill of complaint was filed herein, and has never since been. That he has no positive information as to where said original is, nor in whose possession same is nor under whose control it is,
but he believes that the same is in the possession or under
419 the control of James Stillman of New York, or Messrs. Shearman & Sterling of New York, his attorneys. That he last saw said agreement on or about the 15th. day of July, 1887, at Brownsville, Texas, in the possession of E. H. Goodrich notary public.

Answering the alleged amended bill of complaint, these defendants answer as follows:

Defendants admit that Charles B. Combe, Frederick J. Combe, Joseph K. Combe, Frank B. Combe and Emil P. Combe, complainants in defendants' amended bill, and defendants Frances D. Landrum, Annette P. Hicks and Agnes Anastacia Browne are all residents of the State of Texas and reside in Cameron county, Texas, as alleged in said defendants' amended bill; and that defendant Frederick J. Combe is in the service of the United States Army in Cuba, and Emil P. Combe is in business in San Luis Potasi, in the Republic of Mexico, as alleged in defendants' bill, and that defendant Felicita Salinas is a resident of the State of Texas, and resides at Corpus Christi, Texas, in Nueces county, and that defendant Jose Maria Salinas resides in Reynosa, in the Republic of Mexico, and defendant Andrea Salinas resides at Matamoros in said Republic of Mexico, as alleged in defendants' amended bill. That they do not know and have no information as to whether Matt Gerhard is living or dead and as to whether he left a number of children whose names and residences cannot be ascertained, and as to whether it would cause delays and amount to a denial of justice to make them parties. That they do not know and have no information as to whether the title and interest claimed by the said Matt Gerhard, if any, is jointly held by his heirs and the plaintiffs Francisco Yturria, Andrea Salinas, Felicita Salinas, and that they fully represent said interest in this suit and that in this regard this is a representative suit. These defendants specially aver, however, that

none of the said named parties nor their representatives have any right, title or interest in and to said alleged fund. That they do not know and have no information as to whether the said Leocardio Salinas, Antonio Salinas, Melchor Salinas, Hijinio Salinas, and Alejandro Salinas are deceased and have numerous descendants whose names cannot be definitely ascertained that it would cause oppressive delays and amount to a practical denial of justice
420 to attempt to make their descendants parties hereto. That they do not know and have no information as to whether the alleged interest of said defendants, or their descendants, if any they have, in this suit is jointly owned by them and the defendants Berna-do Salinas, Jose Maria Salinas, Juan Salinas, and Vicente Salinas, now as to whether the last named parties represent said interest and that in this regard this is a representative suit; but they specially aver, as hereinbefore averred, that none of the said above named parties have any title to or interest in the said alleged fund.

XVII.

The defendants admit that Kate M. Combe, the wife of plaintiff C. B. Combe alleged to be executor, and the mother of the other plaintiffs named in said amended bill, was one of the devisees of said Stephen Powers, and that she departed this life on the 10th. day of September, 1887, having first duly executed her last will and testament, which has been duly probated in the probate court of Cameron county, Texas, and that in said will she devised and bequeathed all her interest in the said estate of Stephen Powers, deceased, to her said children named as plaintiffs in said amended bill. They admit that Annette P. Hicks, Frances P. Landrum and Agnes Anastacia Browne are the other devisees under the will of said Stephen Powers, deceased. They aver that they do not know and have no information as to the reasons why the said plaintiff, C. B. Combe, has by said amended bill made new and additional parties plaintiff and defendant.

XVIII.

The defendants aver that they do not know and have no information as to whether the matters referred to in paragraph IV of said amended bill were so inadvertently averred or not. That as to the intent and meaning of said contracts and all others made in regard to said fund these defendants say that all of said agreements and contracts are plain and unambig-ous and speak for themselves, and are submitted to this court for its construction; and that neither the said James Stillman nor the said Thomas Carson are alleging and pretending contrary to the truth that they or either of them have been given authority to pass upon and determine the justness and propriety of any and all expenses, accounts and claims made against said fund and to pay
421 the same out of said fund, but that the true intent and meaning of said agreement and the rights of all parties thereunder

is submitted to this court for its consideration and adjudication. These defendants aver with reference to the alleged payments made out of said fund and set out in said paragraph IV of said amended bill that the said Thomas Carson never in fact collected any of said $160,000.00, and never had possession of any portion of same, but that he is informed and believes that his co-defendant James Stillman, or some one for him, did collect said sum from the said United States Government, but that said collection was not made until after said arbitration had entirely failed, and did pay out certain sums of money out of said fund, and that they are informed and believe that the facts with reference to this matter are as follows: That the act of Congress passed on March 3, 1885, appropriating the sum of $160,000.00 for the purchase *for* the Fort Brown reservation and as payment for the use and occupation of the premises by the Government since the year 1846 was not passed until after repeated efforts had been made to secure payment from the Government for the use and occupation of the property and for the fee in case it desired to purchase the property, and not until after contin-ois efforts extending over several years had been made to prevail upon Congress to pass such an act. The appropriation as made in March 1885 was not actually paid until more than ten years later, namely, in April 1895. The efforts to obtain the payment of this appropriation were constant and urgent during the entire decade and involved very extensive disbursements on the part of said James Stillman and the defendant Thomas Carson, administrator, and their attorneys in attending Washington before the committee of the House and Senate and before the various executive departments. During the entire period prior to the passage of the appropriation act of 1885 and during the ten years following when such a large amount of time and expense was devoted to the effort of collecting the appropriation, neither complainant nor any party to this suit, except said James Stillman, so far as these defendants know, ever expended a dollar towards securing the appropriation or towards obtaining its payment, and neither the complainant nor any other party to this suit, with the exception
422 of the said Carson and the said Stillman, ever bestowed any time of effort towards obtaining the said appropriation or towards collecting it. On the contrary, the appropriation would almost certainly have been paid within a year after it was made had it not been for the obstructive tactics employed on the behalf of the complainant herein and other parties to this suit. Under the terms of the agreement the sum of $20,000.00 was payable to Washington agents who had aided in securing the appropriation, hereinbefore referred to. The said arbitration having failed by the death of Mr. Ballinger and the refusal of Mr. Culberson to further act, when said appropriation was made, it was not possible to pay any sum to the arbitrators mentioned in said agreement, and even if they had all been living and had consented to act, the payment to them of the $20,000.00 would have been merely a round about way of paying a

claim which was admitted to be due. Said claim was originally incurred for services connected with obtaining the appropriation. Agents skilled in matters relating to the executive and legislative departments at Washington had necessarily to be employed to confer with the heads of departments and to inform the members of Congress of the merits of the claim. Long before any claim of any kind was made by the original complainant herein, or any of the parties hereto that they had any interest whatsoever in the Fort Brown reservation, the said James Stillman entered into a contract by which he agreed to pay a certain percentage to Dr. Wm. Brady for services in connection with obtaining recognition of the claim by the Government. Although said Stillman contracted with said Brady that his fees should be paid only out of the money collected he subsequently sued said Stillman in the United States circuit court for the southern district of New York for the sum of $20,000.00, together with an additional sum which he claimed to be due to him for services rendered in connection with the appropriation. Said suit was contested, but was finally settled by an agreement by which it was provided that he should receive out of the appropriation, when collected, the sum of $20,000.00 in addition to $1,500 previously paid to him and $500.00 paid to him at the time of the execution of the agreement. The propriety of said agreement with Mr. Brady was never questioned by Mr. James B. Wells, who
423 represented the complainant and other parties in this litigation adverse to the said Stillman, Gen. J. Hale Sypher of Washington, D. C., claimed to have assisted Mr. Brady in procuring the appropriation and also claimed that Mr. Brady had agreed to allow him $5000.00 out of the $20,000.00 for his services. This Mr. Brady denied and Gen. Sypher then insisted that the owners of the property should recognize his claim for services. The said Stillman declined to do this for a long time, but Mr. Wells representing the Powers estate and others did enter into an agreement, a copy of which is annexed to and forms a part of the answer of the defendant James Stillman herein and is marked "Exhibit A" therein, reference being here now made to said exhibit with prayer that same may be considered and made a part hereof, providing for the payment of the said sum of $5,000.00 to Gen. Sypher out of any amount which might be payable to his clients, if the same was not deducted by Mr. Brady from his $20,000.00, and the said Wells strongly recommended to the attorneys of said Stillman that he should allow the said claim of said Gen. Sypher. The latter subsequently performed many services in connection with the efforts made by the attorneys of said Stillman to collect the appropriation, and, long before the appropriation was finally paid, the said Stillman withdrew his opposition to the said claim, in the event that the money was actually paid; and the said sum of $5,000.00 was actually paid to the said Gen. Sypher in May 1895. That on October 19, 1889, an agreement was executed by various persons claiming an interest in said appropriation, including the original complainant and the dev-

isees under the will of Stephen Powers, a copy of which is annexed to and forms a part of the answer of the defendant James Stillman herein and is marked therein "Exhibit B," reference being hereby made to same with prayer that said Exhibit "B" may be taken and considered as a part hereof, providing for the expenditure of the further sum of $25,000.00 in collecting the said appropriation. Said agreement was executed at a time when it was supposed that the appropriation could be collected within a short period, whereas, it was not in fact actually collected until nearly six years later and after the expenditure of a vast amount of time and much
424 additional money in the effort to collect the same. Of all these facts the complainant- herein either personally or through their attorneys, the said James B. Wells, were well informed; and out of the amount of said appropriation collected by the said Stillman he actually paid on account of such expenses and disbursements, in addition to the sum hereinbefore mentioned, the sum of $33,101.02, much more than the said $25,000.00. That in addition to this, the said Stillman paid out for taxes on the Fort Brown military reservation the sum of $8.101.02; which payment had to be made or otherwise the United States Government would not have paid said appropriation nor accepted a conveyance of said premises.

XIX.

These defendants further deny th-t the said Powers estate is the owner of and entitled to one half of said $160,000.00 as alleged in paragraph IV of the amended bill, and that defendants Stillman and Carson are estopped to deny from the facts alleged in paragraph IV that the said C. B. Combe had ceased to be executor of the said Stephen Powers at and before the filing of the original bill herein. They believe it to be true that the said Stephen Powers died seized and possessed of a large landed estate situated in Cameron and Hidalgo counties, in the State of Texas, which he disposed of by his will, and that a large part of said estate has been partitioned; but they do not know why the same was partitioned, but believe and so charge that it was for the purpose of finally closing said administration and delivering the assets to the legatees and devisees. That they are informed that since the 27th day of May, 1889, down to the present time the estate of Stephen Powers, and through said estate, the children of Mrs. Kate M. Combe, plaintiffs in this suit, and Mrs. Pauline Hicks, Mrs. Frances E. Landrum and Mrs. Agnes A. Brown, defendants in this suit, have under the will of Stephen Powers claimed to own and hold as tenants in common with defendant Marie Grogan Dana the tract of land in Cameron county called the "Paredes tract," but these defendants say that they have no knowledge or belief as to whether the said defendants are vested with title and ownership of said tract, as alleged, but deny that they are such owners,

and demand strict proof of same. These defendants
425 deny that the said "Paredes tract" embraces 46,103 acres of land, but aver that said tract contains less than 44,000 acres of land; and they further — that said tract forms a part of the city of Brownsville or of the Fort Brown reservation but aver that said "Paredes tract" lies far to the east of said city of Brownsville and of said Fort Brown reservation. They say they have no knowledge, information or belief with reference to the rent due the estate of said Stephen Powers on said tract, nor with reference to same having been wrongfull- with-held from the owners of said land. They admit that B. O. Hicks departed this life in November 1887, but they do not admit that he left the plaintiff herein C. B. Combe, sole surviving executor of the estate of Stephen Powers, deceased. They have no knowledge, information or belief concerning matters set up in paragraph V of said amended bill with reference to an application to the attorney therein named for an opinion on the matters therein referred to and the answer of said attorney to said application. They deny that the defences set up herein by pleas in abatement that C. B. Combe is no longer executor of the estate of Stephen Powers, deceased, and was not such when this suit was filed, are part and parcel of any conspiracy existing between the defendants Stillman and Carson and other persons, as alleged in paragraph V of said a-ended bill, and deny that any such conspiracy ever existed. They admit that the said defendant Thomas Carson appointed one John A. Garver as his attorney in fact to aid in the collection of said sum of $160,000.00 from the United States Government, and they are informed that the said John A. Garver did collect said $160,00-.00, and delivered to the United States Government receipts therefor; but they aver that no portion of said sum has ever been paid to the said Thomas Carson by the said John A. Garver or the said James Stillman.

XX.

These defendants again deny that the said Stephen Powers at his death owned one half of said Fort Brown reservation and that his estate owns at least one half of the said fund of $160,000.00 as averred in paragraph VII of said amended bill.

These defendants further answering admit that certain exemplified copies of certain records of the War Department and Treasury
426 Department on file in this suit as exhibits to the complaint and information against Stillman and Carson for contempt, which exemplification- of record are made Exhibit "C" to complainants' amended bill, are true copies. And these defendants further admit that the duly certified copy of the record in said suit No. 248 on the law docket of this court marked Exhibit "E" and attached to said amended bill of complaint is a true copy of such record.

XXI.

And further answering in this behalf these defendants aver and charge that this court has no jurisdiction of the subject matter of complainants' bill of complaint.

1. Because both the plaintiffs and these defendants are citizens of the State of Texas, and there is no such diversity of citizenship of parties necessary as to give this court jurisdiction.

2. Because the original suit, No. 248 Salinas *vs.* Kellogg, was an action at law, the only issue being that of title to the Fort Brown reservation; that final judgment in said action was rendered and fully carried into effect and nothing remains to be done in said cause.

3. Because the agreement to arbitrate was not a part of said suit at law and never filed in said suit, as there was *no* fund in the said court to adjudicate. The court knew nothing of such fund when it adjudicated the title, and — fund has ever been in the custody of this court, nor did said fund ever form any part of the papers, pleadings or issues in said suit at law.

4. Because the parties to said suit cannot be said to be still before the court; the court having finally adjudicated in said suit all there was before the court for adjudication.

5. Because the agreement to arbitrate, being a separate and independent undertaking, a breach thereof could only be remedied by an independent suit.

6. Because the bill shows upon its face that it is entirely without equity; and no reason is shown why this court should take jurisdiction of the same or attempt to administer the property.

7. Because the court is entirely without power to appoint a receiver as prayed for; it appearing from complainants' bill
427 that the money is not within the custody of the court nor subject to its process, nor within reach of the process of the court, and is not within the State; and no proper process has been served upon the non-resident defendants and no custody or power of the court has been extended over either the persons or the money sought to be administered under the orders and decrees of this court.

8. Because this is not a suit to restrain payment of funds into possession of court. It is not a suit to set aside the decree on ground of fraud. It is not a judgment creditor's bill. It is not a suit affecting property in the possession of the court. It is not a suit to restrain enforcement of judgment. It is not a suit to restrain one from occupying land, to which in a former suit he had been held to have no title. It is not an ancillary suit, to decree judgment for valid liens and to direct sale of property to satisfy it. It is not a suit to enjoin garnishment proceedings. It is not a suit to resist foreclosure proceedings. It is not a suit to secure restoration of property illegally paid out of court under void judgment, and the alleged fund has never been in the actual possession of the court or

under *the* control, so as to give it the jurisdiction to decide upon conflicting claims thereto.

9. Because the bill shows that it is brought upon a cause of action arising subsequent to the judgment complained of, but in no way connected with the facts or issues involved in the former suit; the former suit being brought to determine the title to real estate and this suit being brought to determine the title to *to* a certain fund over which the court in a former suit had no jurisdiction, the fund not being in existence at the time, and the court knew nothing of the plans and motives of the parties to that suit, and because the same were not disclosed by the records or made a part thereof.

10. Because it is apparent from the face of the bill, that the cause of action is in nowise a continuation of the issues raised in the action at law, nor dependent upon the said suit therein, but is purely a separate and independent matter and without equity. Because it appears upon the face of said bill, that this defendant as administrator of the estate of Maria Josefa Cavazos, deceased, and James Stillman were authorized to collect from the United States Government said alleged fund; and, therefore, as soon as said fund was collected it became a part of the assets of the estate of Maria
428 Josefa Cavazos, deceased, and this defendant would be without authority to pay same into the custody of this court, and this court is without jurisdiction to compel him as such administrator to pay such fund, or any portion thereof, into this court, as the custody of such portion of said fund as belonged to the estate of Maria Josefa Cavazos, deceased, is alleged in said bill to have been in the custody of this defendant as such administrator at the time of the filing of the bill, and, therefore, in the custody of the probate court in which said estate is being administered.

XXII.

And further answering these defendants aver, that this suit should be abated, because complainant at the commencement of this suit was not nor has he since been nor is he now the executor of the estate of Stephen Powers, deceased, as in his bill of complaint alleged, nor was he at the commencement of this suit nor thence hitherto nor now authorized to sue herein as such executor, nor had he at the commencement of this suit nor thence hitherto nor has he now any interest as such executor in the subject matter of said suit whatsoever; but in truth and in fact he had long before the commencement of this suit ceased to be such executor and closed his trust as such, and said executorship was finally closed and settled; and said complainant therefore is without capacity to sue herein as such executor, and was without such capacity at the commencement of this suit.

XXIII.

And further answering in this behalf these defendants aver, that there is a misjoinder of parties complainant and parties defendant

in this cause, in that part of the devisees of Kate M. Combe, to-wit: Charles P. Combe, Fred J. Combe, Frank K. Combe, Joseph K. Combe and Emil P. Combe are made parties complainant, and Mrs. Annette P. Hicks, Mrs. Frances E. Landrum and Mrs. Agnes A. Browne, another part of the said devisees of Mrs. Kate M. Combe, are made parties defendant, said persons being neither necessary nor proper parties to this bill, either as parties complainant or as parties defendant, if the said C. B. Combe has the right as independent executor of the last will and testament of Stephen Powers, deceased, to have and maintain this bill. By reason whereof the said original and amended bills of complaint filed herein should be dismissed; and defendants further aver that the matters of defence set up and charged in this paragraph and in paragraphs XX and XXI
429 foregoing are more fully set out and pleaded with greater particularity in the reply of these defendants to show cause why a receiver should not be appointed, filed July 15, 1897, in this cause, and the plea of these defendants to the jurisdiction of this court filed herein May 25, 1898, and in the reply of these defendants to the rule to show cause why they should not be adjudged in contempt filed herein July 5, 1898, and in the plea in abatement of these defendants filed in this cause on August 31, 1898, and in the demurrer of these defendants to the original and amended bill filed in this cause December 1, 1898, to which r-ference is hereby made for greater particularity and asked to be considered and taken as a part of this answer.

XXIV.

And for further answer these defendants aver and charge and deny that the complaiana-t, or any of the other parties to this suit, excepting James Stillman, have or ever at any time had any claim, right, title or interest in and to the said premises commonly called "Fort Brown reservation," or have or ever had at any time any right, title or interest in and to the said fund of $160,000.00 and further say that none of the parties to this action, except the said James Stillman and this defendant as administrator, have or ever at any time had any right, title or interest or claim in or to any part of the said premises or to the said fund.

XXV.

And for further answer herein these defendants say, that by regular deraignment of title, derived from the Crown of Spain in 1781, granted to Don Salvador de la Garza and confirmed by an act of the legislature of the State of Texas in 1852, under the name of the Espiritu Santo, one Maria Josefa Cavazos was duly seized and possessed of the one sixth part of the whole of said grant; which one sixth part consisted of a tract of land reaching from the River Rio Grande due magnetic north to the Arroyo Colorado, a distance of about thirty-five miles, and which contained, among other land, the

whole of the said Fort Brown reservation; which reservation is properly described in complainant's said original bill, in paragraph III thereof.

XXVI.

And the said *parties* being so owned by perfect seizin under the last will of Maria Francisca Cavazos, who died in 1835, devised the same to the said Maria Josefa Cavazos, of Matamoras, who by her deed of conveyance executed and delivered in or about the month of March, 1875, granted, sold and conveyed the undivided
430 one half part thereof to one Charles Stillman, then of the city of New York, now deceased, which one half part is now owned by James Stillman, son of the said Charles, who resides in said city of New York.

XXVII.

And the said Maria Josefa Cavazos so being seized of the said undivided one half part of said premises departed this life in November 1878, leaving her last will, which was duly proved and admitted to probate in the county court of Cameron county, where said premises are situated, in January, 1879, by which said will the said undivided one-half part of the said premises with all of the rents, interest, dues and demands for use and occupation thereof were duly devised and bequeathed to her son, one Pedro G. Cavazos, who was also named therein as sole executor thereof.

XXVIII.

That afterwards the said Pedro G. Cavazos, being unable to qualify as such executor, was by the action and judgment of the said probate court, duly removed as such executor; and this defendant Thomas Carson was duly appointed by said court administrator of the estate, etc., with will annexed of the said Maria Josefa Cavazos, deceased, in the place and stead of said Pedro, and was thereupon duly qualified by suitable bail and duly sworn to discharge the duties of such administrator and authorized and directed to take the said Fort Brown reservation, with all its rents, issues, interest, income and profits, into his possession and control as such administrator, subject to the further orders of said probate court, and has duly entered upon and is now continuing to discharge his duties in this behalf.

XXIX.

And afterwards, on or about the 11th day of April, 1887, in and by a certain action of the district court of the said county brought by this defendant as plaintiff and prosecuted against the said Pedro G. Cavazos, and by the judgment of said court, duly rendered and docketed on that day, this defendant as administrator as aforesaid, duly recovered in that action all the right, title and interest of the

said Pedro G. Cavazos in and to the said premises and the said rents, issues, dues, interest and profits thereof, and now holds same as such administrator as aforesaid.

XXX.

And these defendants further answering say, that during the war between the United States and the Republic of Mexico and
431 about May 1, 1846, the whole of the premises known as the "Fort Brown reservation" was seized by the military forces of the United States, and has been from that time until the present occupied and held by said military forces as such, in subordination, however, and recognition of the rightful ownership and title of the said Cavazos', their heirs and assigns, in and to the said Fort Brown reservation.

XXXI.

That in the year 1853, in pursuance of the terms of an act of the legislature of the State of Texas, passed December 19, 1849, the executive officer in charge of the said military forces of the United States so then being in the possession of the said Fort Brown reservation by direction and with the approval of the Secretary of War of the United States duly presented his petition to the district court in and for Cameron county, praying for the expropriation of the said premises to the use of the United States and that the proper steps might be taken under the orders of the said court, for the survey and appraisement of said premises and for ascertaining who were the owners thereof, to whom suitable compensation, according to the verdict of the jury, as provided by said act, might be made. Thereupon an order was duly made by said court and was duly published in a public newspaper published at Brownsville, in said Cameron county, in the State of Texas, called, "The American Flag," for eight weeks successively, in the summer of 1853, in accordance with the terms and intent of said statute, calling upon all claimants of title, and those who were in anywise interested in the said premises to be and appear on a certain day therein named at the district court in the city of Brownsville to show cause, if any they had, why the said premises should not be expropriated to the service of the United States, according to the terms and provisions of the said act of the legislature of Texas, and to be present at the appraisement and assessment of value of said premises by the jury then to be empanelled and sworn.

XXXII.

That on the said day and at the time and place mentioned in the said published notice, the said Maria Josefa Cavazos duly appeared in the court making her exclusive claim to said premises and protesting against their being acquired by the United States Government under the said statute, and likewise the City of Brownsville, by

its attorney, then and there duly appeared in the said court
432 and made claim to the said premises called Fort Brown reservation as the rightful owners thereof, but that no other parties or persons or individuals appeared and asserted any claim or right, title or interest in and to said premises.

XXXIII.

And thereupon no sufficient reason being shown why the said premises should not be acquired by the said Government of the United States, the survey of the said premises being duly presented and approved by the said court, a jury of competent citizens of said county was duly chosen, empaneled and sworn according to the provisions of said statute, who, after hearing the proof and allegations of the said parties' claims and having viewed the said premises, retired to consider of their verdict, and returned into court with their verdict, by which the value of the said premises was appraised and assessed at $50,000.00, which verdict was thereupon duly received and approved by the said court and entered of record.

XXXIV.

That it then appearing that a certain litigation involving the title to said premises was pending between the said City of Brownsville of the one part and the said Maria Josefa Cavazos and others of the other part, no final judgment was entered or given by said court awaiting the result of the said litigation, and thereupon, the said United States acting by their military officer took possession of the whole of said premises and from time to time erected various substantial improvements and buildings thereon and occupied and held the same from that time (1853) under and in pursuance of the said proceedings. That afterwards, in the year 1878, Maria Josefa Cavazos died, and in the month of February 1879, the said pending litigation between the City of Brownsville and Cavazos and others having been brought to a close in 1876 by judgment by which the said premises were adjudicated to be the property of the said Maria Josefa Cavazos.

XXXV.

That thereupon further proceedings upon due notice by the attorney of the United States were duly had in the said district court, and a certain judgment was then and there duly rendered in said proceeding for expropriation of said Fort Brown reservation, to the effect that upon the payment by the said United States of the said sum of $50,000.00 and interest into the First National Bank of Galveston, the title to the said premises should vest forever
433 in the said United States, with jurisdiction over the same according to the said statute; and inasmuch as the said judgment of this court of June 1876 was then pending on writ of error

in the Supreme Court of the United States in the city of Washington, it was further provided in and by the said judgment of the district court that upon the final disposition of that cause at Washington, application might be made by either party entitled for an order in the said district court to enable such party to reach and receive the said funds should the same be paid over by the United States as should be thereto entitled.

And afterwards, about the month of December 1879, in the said Supreme Court of the United States at Washington, the said judgment in the case of the City of Brownsville against Cavazos and others so rendered in said honorable court in June 1876, was in all things affirmed, as by reference to the record thereof will more fully and at large appear.

XXXVI.

That by reason of the condemnation proceedings had as aforesaid in the years 1853–79, and by reason of the fact that the complainants and none of the defendants and no person under whom they claim title except the said Maria Josefa Cavazos and this defendant administrator therein appeared and asserted any claim to or right, title, or interest in and to said Fort Brown reservation during all that time, they are now estopped and forever barred from so asserting any such title or claim to said fund of $160,000.00, or any part thereof.

XXXVII.

And these defendants further answering, aver and charge that the complainant and the heirs of Stephen Powers, deceased, and Marie Grogan Dana and C. S. Dana, and Jacob Mussina, and all of the parties to this suit who claim title to the said "Paredes tract" by, through or under José Miguel Paredes and his devisees and assigns, are estopped and concluded from setting up or asserting that they, or either or any of them, ever had any claim of right, title or interest in and to the said Fort Brown reservation, or any portion thereof, because:

They, each, all and every of them derai-n and assert title to the said "Paredes tract" by, through, or under the said José Miguel Paredes, his devisees and assigns, and particularly through a certain deed and conveyance executed by Jacob Mussina to the
434 said Stephen Powers and Nestor Mexan, dated March 31, 1875, and recorded in the deed records of Cameron county, Texas, in Book D, pp. 330 and 331 thereof; and through a certain deed and conveyance executed by the said Jacob Mussina to the said Stephen Powers, dated March 5, 1879, recorded in the deed records of Cameron county, Texas, Book E, pp. 166 and 167 thereof; but these defendants aver and charge that the said Charles S. Dana and his wife, the said Marie Grogan Dana, and the said Jacob Mussina, as plaintiffs, instituted a suit against the said Maria Josefa Cavazos, John Cross and John Treanor, as defendants, in the district

court of Cameron county, Texas, on November 13, 1874, in trespass to try title to recover the said "Paredes tract." That in said suit, judgment final was rendered on May 12, 1875, against the said Maria Josefa Cavazos and John Treanor for the land described in plaintiffs' petition in said suit. The western boundary of the lands claimed was described in said petition as being: Bounded on the west by lands owned and claimed by Maria Josefa Cavazos."

And these defendants aver and charge that the description of the western boundary of the said "Paredes tract" as it appears by the judgment and original petition in said cause, to-wit; "Bounded on the west by lands owned and claimed by Maria Josefa Cavazos," is the true and correct description of said boundary.

That at the time of the institution of said suit and the rendition of said judgment, Maria Josefa Cavazos owned and claimed all the land lying between the Fort Brown reservation and the said western line of the said "Paredes tract." That at the time of the institution of said suit, and the rendition of said judgment, the Fort Brown reservation was in the possession and occupancy of the United States military authorities, and that the locality and limits thereof were and are notorious facts, well known then and now.

That the title to the Fort Brown reservation was not an issue in said cause and no claim, right, title, or interest therein were asserted in said suit, but the said Dana and wife, and the said Mussina, and the said parties claiming through and under them, in and by the said suit and judgment, are bound by the recitals and description of the said "Paredes tract" as set out and adjudged in them, and they should be and are forever concluded and estopped from setting up any claim of title to any lands other than those as described and claimed in and by said suit and judgment.

435 XXXVIII.

And these defendants further answering, aver and charge that the complainant and the heirs of Stephen Powers, deceased, and Marie Grogan Dana and C. S. Dana, and all of the parties to this suit who claim title to the said "Paredes tract" by, through or under José Miguel Paredes and his devisees and assigns, are estopped and concluded from setting up or asserting that they, or either of them, ever had any claim of right, title or interest in and to the said Fort Brown reservation, or any part thereof, because:

They, each, all and every of them, deraign and assert title to the said "Paredes tract" by, through or under the said José Miguel Paredes and his devisees and assigns, and particularly through that certain deed and conveyance executed by Miguel Fernandez under power of attorney from his wife, Clemencia Prieto, to San Diego Grogan, at Matamoras, Mexico, on March 18, 1848, acknowledged before Joaquin Arguelles, notary public, and recorded in deed records of Cameron county, Texas, in Book A, pp. 356 to 363, inclusive, wherein and by said deed, the said "Paredes tract" of land

is described as: "Ten square leagues of pasture land, situated in the potrero Espiritu Santo, on the other side of the Rio Bravo, between Los Tomates and Santa Rosalia, and extending back to the north for quantity.

That the said Los Tomates referred to in said description, was at the time of the execution of said deed and still is a ranch or small settlement, the location of which is now and was notorious and well known, and the said Los Tomates lies east of the said Fort Brown reservation.

That the said Santa Rosalia referred to in said description was, at the time of the execution of the said deed, and still is a ranch or small settlement, the location of which is and was notorious and well known. That the said Santa Rosalia ranch lies about two miles east of the said Fort Brown reservation.

That at the time of the execution of said deed, the Fort Brown reservation was in the possession and occupancy of the United States military authorities, and that the locality and limits thereof were and are notorious facts, well known then and now.

That under and by the said deed, no part or portion of the Fort Brown reservation is conveyed, or sought or was intended to be conveyed.

That the said parties claiming by, through and under the said deed are bound by the recitals and description of the lands
436 therein contained, and they should be and — forever concluded and estopped from setting up any claim of title to any lands by said deed further than those described therein.

XXXIX.

These defendants further answering, aver and charge that ever since the year 1835, the said premises have been, and long before that time, claimed, owned and held and occupied by Maria Josefa Cavazos, her ancestors and those claiming through and under her, adversely to complainant. That Maria Josefa Cavazos, and those claiming through and under her, have paid the taxes upon this land and have never relinquished right, title or claim to same at any time. That no other person, persons, or individuals have occupied said land, or any part thereof, except that the United States Government, as heretofore set out, took possession of that portion of the Cavazos lands as are more particularly described in complainant's original bill, but without asserting title thereto. That since such occupancy by the United States, Maria Josefa Cavazos, and those claiming through and under her, and this defendant as administrator, have continued to assert, with the acquiescence and consent of the United States Government, their right and title to said premises, and continually since the year 1846, demanded compensation for the same and for the use and occupation thereof. That the United States in taking and holding possession of the said premises have constantly recognized the legal title of the said Maria Josefa Cavazos,

and those claiming through and under her, and have held under them as their tenants and have requested them to pay all taxes due upon the premises, which has been done. That these defendants aver and charge that they and Maria Josefa Cavazos, and those holding through her, and James Stillman held good and perfect right and title to said Fort Brown reservation, from the year 1835 down to the date of the conveyance of said reservation by this defendant administrator and defendant James Stillman made in April 1895 to the United States, and that these defendants, and those through whom they claim, have had and held peaceable and adverse possession of said Fort Brown reservation, using and enjoying the same, against any claim of right, title or interest asserted by any of the parties named in this suit, except James Stillman, for a period of more than ten years next before May 1, 1846, and for a period of more than ten years next before the commencement of said suit No. 248, Heirs of Miguel Salinas *vs.* William L. Kellogg, originally
437 instituted in the district court of Cameron county, Texas, No. 1548, on the docket of said court, and filed therein June 29, 1886.

Wherefore, these defendants say, that the complainant and all other parties to this suit, except James Stillman, had no valid, legal or equitable claim of right, title or interest in and to the said Fort Brown reservation, or to the said fund of $160,000.00.

XL.

And further answering these defendants say, that the said Thomas Carson, in his individual capacity has and claims no right, title or interest in and to the said Fort Brown reservation and the said fund of $160,000.00, and has never asserted any claim, right, title or interest or sought, endeavored or obtained any advantage in and to the said premises or said fund on his own behalf, but in all matters and things concerning same he has acted solely and entirely in his capacity as administrator, etc., of the estate of Maria Josefa Cavazos, deceased, and here now in his individual capacity disclaims any right, title or interest in and to said land or fund and prays that he individually may be dismissed as a party to this suit, with his costs in this behalf incurred.

XLI.

And further answering these defendants aver and charge as they have hereinbefore charged:

1. That neither complainant nor those whom he pretends to represent, nor the heirs of Stephen Powers, deceased, nor C. S. Dana and Marie Grogan Dana, nor those claiming by, through or under them, have or ever owned the said "Paredes tract" of land, or any part thereof, or have ever had any valid title to same.

2. That the said "Paredes tract" froms no part or portion of the said Fort Brown reservation.

3. That none of the parties complainant or defendants ever had any right, title or interest in and to said Fort Brown reservation, or to the said fund of $160,000.00, except the said James Stillman and the defendant Thomas Carson, as administrator of the estate, etc., of Maria Josefa Cavazos, deceased.

4. That the said James Stillman and the said Thomas Carson, administrator, up to the time of the divest-ure of title out of them into the United States of America by their said deed of conveyance made in April 1895, were the sole owners of said Fort Brown reser-
438 vation in equal undivided moieties, and that they alone are entitled to the said fund of $160,00-.00, in the same proportions, and most respectfully pray judgment of the court accordingly.

All of which matters and things these defendants are ready to aver, maintain and prove, as this honorable court shall direct, and hereby prays to be hence dismissed with their reasonable costs and charges in this behalf sustained.

THOMAS CARSON.
THOMAS CARSON,
Administrator of the Estate of Maria Josefa Cavazos, Dec'd.

FRANKLIN, COBBS AND McGOWN,
DUVAL WEST,
Solicitors for Defendant Thos. Carson, Ind. and as Adm'r, etc.

THE STATE OF TEXAS, }
439 *County of Cameron.* }

Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, and individually, being duly sworn, says, that he is defendant in the above entitled cause; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters therein stated on information and belief, *and as to those matters* he believes it to be true.

THOMAS CARSON.

Sworn to before me, this 6th day of March, A. D., 1899.

[SEAL.] D. H. HART, *Clerk*,
By CHAS. F. TILGHMAN, *Deputy*.

(Endorsed:) No. 21. In equity. C. B. Combe, executor, etc., *vs.* James Stillman, *et al.* Joint answers of defendant Thomas Carson, adm'r etc., and in his individual capacity to original and amended bills of complaint. (Eq. 21) Offered in evidence by intervenors Cavazos. Filed March 6th, 1899, D. H. Hart, clerk, by Chas. F. Tilghman, deputy. (102) Franklin, Cobbs and McGown, Duval West, sol'rs def't Carson, adm'r and individually.

440 *Second Amended Bill.*

In the Circuit Court of the United States for the Western District of Texas, Brownsville Division.

I.

C. B. COMBE, Independent Executor of Stephen Powers, Deceased, *et al.*
vs.
JAMES STILLMAN and THOMAS CARSON, Administrator *c. t. a.* of Maria Josefa Cavazos, Deceased, *et al.*
} No. 21. In Equity.

II.

To the judges of the circuit court of the United States for the western district of Texas:

III.

The said plaintiffs, C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, and also in his own name, and in his individual right, and Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph K. Combe, and Emile P. Combe, leave of the court first being had and obtained, bring this their amended bill, in amendment of their original bill filed herein June 14, 1897, and their amended bill filed October 29th, 1898, which with this amendment, are to be taken and considered as one bill and one record, against the said defendants, James Stillman, Thomas Carson as administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and in his own right, Francisco Yturria, H. E. Woodhouse, Henry Miller, Charlotte Miller, Charles S. Dana, Marie Grogan Dana, Frances E. Landrum, Annette P. Hicks,
441 Agnes Anastacia Brown, Bernardo Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, and R. D. Hinojosa; and they reaffirm*ed* all the allegations in their original bill as heretofore amended, except as the same may be herein modified: and thereupon your orators complain and say:

IV.

1. The plaintiffs aver that Fort Brown reservation, the compensation of $160,000.00 for which is in controversy in this suit, is situated on the middle third of the "Espiritu Santo" grant, which is a large tract of land situated in Cameron county, Texas, containing about 54 and ¾ (fifty-four and three quarters leagues of land, and which was granted by the Crown of Spain in the year A. D. 1781, to Jose Salvador de la Garza, and which was confirmed to his heirs and their assigns, and grantees, and devisees, by confirmation cer-

tificate No. 42, for the county of Cameron, under and by virtue of an act of the legislature of the State of Texas, entitled "An act to relinquish the claim of the State to lands situated between the Rio Grande and Nueces rivers," approved February 10, 1852; and for which said "Espiritu Santo" grant, a patent was, on June 21st, 1859, and dated on that day, by the State of Texas, issued to the said heirs of the original grantee, and their assigns and grantees and devisees. The boundaries of said Espiritu Santo grant, as shown by the field notes of the original survey thereof, made in the year A. D. 1781, and as established and declared by the adjudication of the supreme court of the State of Texas, and the Supreme Court of the United States, are as follows, towit: Said Espiritu Santo grant is bounded on the south by the Rio Grande river; on the east by the "San Martin," the "San Isabel" and the "Buena Vista" grants; on the north by the Arroyo Colorado, and on the
west by the "San Pedro de Carricitas" and the "Concepcion
442 de Carricitas" grants.

2. And the said Jose Salvador de la Garza departed this life intestate in the year A. D. 1782, leaving as his only heirs at law, his three children, namely: Blas Maria de la Garza, who married Francisca Cavazos, Xavier de la Garza, who married Jose de Goseascochea; and Margarita de la Garza, who married Lopez Prieto, who, according to the law then in force, inherited in fee simple from their said father said Espiritu Santo grant, share and share alike, and the said heirs of the original grantee, made a lawful and valid partition of said grant, agreeing that each should have one-third (⅓) thereof, with equal frontage on the Rio Grande river, extending back to the Arroyo Colorado, and pursuant to which agreement the said Blas Maria de la Garza entered into possession and became the actual owner in fee simple of the middle third of said grant. But at that time there were no surveys or division lines of said third of said grant, made, nor were the boundaries or dividing lines of said third of said grant at that time settled and ascertained; nor were the boundaries or dividing lines of said thirds of said grant ever at any time made and ascertained and settled, except at the time and in the manner, and by the authorities hereinefter set out and alleged.

3. And the said Blas Maria de la Garza, in the year A. D. 1802, departed this life, seized in fee simple of the said middle third of the Espiritu Santo grant, having in due form of law made, published and declared his last will and testament in and by which he devised the whole of said middle third to his wife, Francisca Cavazos, in fee simple; and in the year A. D. 1817, and on the day and date of her deed next hereinafter mentioned, the said Francisca Cavazos was seized and possessed in fee simple of the whole of the said middle third, which embraced the whole of what is now known as Fort Brown reservation,
and being so seized and possessed thereof, the said Francisca
443 Cavazos, in the year A. D. 1817, by her certain deed, executed and delivered in due form of law, which deed is recorded

in the county court clerk's office of said Cameron county, sold and conveyed in fee simple to Jose Miguel Paredes ten (10) sitios or square leagues off of the eastern part of said middle third of the Espiritu Santo grant; which tract so sold to said Paredes fronted on the Rio Grande river, and extended back to the Arroyo Colorado; and more than thirty years ago, the said Stephen Powers, now deceased, and the said Maria Grogan Dana, and her husband Charles S. Dana, by a regular chain of title to them from the said Jose Miguel Paredes, became the owners of and seized in fee simple of the said ten sitios or square leagues sold to him as aforesaid, off of the eastern part of said middle third, by Francisca Cavazos, the said Powers owning five-eighths and the said Dana and wife owning three-eighths of the said Paredes tract; and the said Powers died so seized and his estate and devisees, and Dana and wife are now so seized of the Paredes tract in the proportions aforesaid. But the plaintiffs aver that at the time of the said sale and conveyance to Jose Miguel Paredes, of the ten sitios or square leagues, the division or boundary line between said tract and the balance of said middle third was not surveyed, nor in any manner ascertained nor settled, nor was said boundary line ever at any time surveyed, or ascertained or settled, except at the time and in the manner, and under the authority hereinafter alleged.

4. And the plaintiffs aver that the said ten sitios or square leagues off of the said eastern part or the middle third of the Espiritu Santo grant, embraces more than one-half of Fort Brown reservation, and embraces nearly all of the permanent and valuable improvements on said reservation, and the Powers estate and his devisees, and the Danas owned said part of Fort Brown reservation and improvements up to the time they were conveyed by defendants Stillman and Carason, as trustees, to the United States Government, as set out
444 in their original bill herein; and they, the Powers estate, and his devisees, and the said Danas, own and are entitled to receive a like proportionate part of the said fund of $160,000.00, with lawful interest thereon from the date the same was collected by defendants Stillman and Carson. And the plaintiffs further aver that up to the time the defendants Stillman and Carason, as trustees, conveyed Fort Brown reservation to the United States Government, as set out in the original bill, the Powers estate, and his devisees, own in fee simple, another certain tract of land situated in Fort Brown reservation, and embraced in that part of the middle third of the Espiritu Santo grant which was not sold to Jose Miguel Paredes, towit: one-half of twenty-two and one-half (22½) acres which they derived from and under Miguel Salinas, by regular chain of title from the original grantee of the Espiritu Santo grant, said Salinas having acquired the same — purchase and conveyance from Maria Jesus Escamilla, by deed dated March 30th, 1835, who was then the owner thereof in fee simple and which was on September 19, 1833, owned in fee simple by said Francisca Cavazos; and the said Powers estate and his devisees owned and are entitled to receive a like pro-

portionate part of said fund, of $160,000.00, with lawful interest thereon from the date the same was collected by defendants Stillman and Carson, in addition to the amount which they are entitled to receive on account of their ownership of that part of the reservation embraced in the Paredes tract. And the plaintiffs plead their said title to said part of the Fort Brown reservation, and improvements thereon, and their right and title based thereon to a proportionate share of said fund of $160,000.00 and interest thereon, and say that they are entitled to decree against defendants Stillman and Carson for the same.

5. And the plaintiffs aver that on or about April 26, 1887, the plaintiff C. B. Combe, executor, and Hicks his co-executor, and defendants Stillman and Carson, and others, all parties to
445 said action at law No. 248, made and filed in said suit a written stipulation, in which it was agreed among other things substantially as follows, towit: (1) By regular descent and devise, accompanied by possession, the middle third of the Espiritu Santo grant, embracing the city of Brownsville and Fort Brown reservation, became the property of Mrs. Francisca Cavazos, and that she, in the year 1817, by deed recorded in the county court clerk's office of Cameron county, sold and conveyed to Jose Miguel Paredes, ten sitios or square leagues off of the eastern part of said middle third, and that at the date of the making and filing of said stipulation the devisees of Stephen Powers and Marie Grogan Dana, owned in fee simple the said tract sold to Paredes;

(2.) That the western part of said middle third, consisting of a fraction over nine square leagues (with the exception of which is known as the Miguel Salinas labor claim, the title to which was at the date of said stipulation in dispute) became the property of Maria Josefa Cavazos by devise from the said Frabcisca Cavazos, who died in 1835;

(3.) That there are thirty-four and — one-hundredths (34 1/100, acres of the said Miguel Salinas labor within the limits of Fort Brown reservation, to which labor Mrs. Francisca Cavazos had title in fee simple on September 19th, 1833. (Said written stipulation is on file with the original papers in said suit No. 248 and a certified copy thereof is attached, together with a certified copy of the whole record in said suit, as an exhibit to the amended bill filed herein October 29th, 1898, and is made a part hereof). And in the agreement of July 13, 1887, made Exhibit D to the original bill herein, it is stipulated as follows:

"Sixth. It is mutually agreed that the title and interest of so much, if any, of the Paredes tract of land, as is in and forms part of the said Garrison propecty of Fort Brown, is held and owned by Mrs. Marie Grogan Dana, and Charles Dana, of Boston, her
446 husband, and by the heirs of Stephen Powers, late of Brownsville, deceased, and shall not be disputed; the only question as to the Paredes tract to be submitted to and determined by said arbitrators being, whether any portion thereof is within Fort Brown

reservation; and if so, how much thereof and its value." And the plaintiffs plead and claim that all the rights and benefits of said stipulation of April 26th, 1887, and said written agreement of July 13, 1887, and the plaintiffs aver that the estate of Stephen Powers, deceased, and his devisees, and the said Danas own, the former five-eighths, and the latter three-eighths, all of the rent and compensation for the use and occupation which have accrued upon that part of Fort Brown reservation which is embraced within the Paredes tract, and the estate of Stephen Powers, deceased, and his devisees, own all of the rents and compensation, for use and occupation which have accrued on one-half of the Salinas labor since *labor since* May 1, 1846, when the property was first seized, down to the date when the compensation of one hundred and sixty thousand dollars therefor was paid over to defendants Stillman and Carson, and are entitled to decree against Stillman and Carson for the same with lawful interest thereon from the date of its receipt by them.

V.

1. And the plaintiffs aver that on June 8th, 1883, B. O. Hicks and the plaintiff herein, C. B. Combe, as executors of Stephen Powers, deceased, and others, filed a suit in the district court of Cameron county, Texas, against the said defendant Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, and others, being suit No. 1346, on the docket of said district court, and a copy of the original petition of plaintiffs in said suit is hereto attached, marked Exhibit A and made a part of this amended bill. The object and purposes of said suit, were, among others, to secure by and through the authority of said court and its judicial action, orders and decrees, the
417 survey, ascertainment and settlement of the dividing line between the eastern, middle and western third- of said Espiritu Santo grant, according to the aforesaid partition of the three heirs of Jose Salvador de la Garza, and also to survey, ascertain and settle the dividing lines of said third- according to the rights of the various persons who own different parts of said grants at the time said last named suit was filed; and it was specially the object and purpose of said suit to survey, ascertain and settle the dividing line between the said Paredes tract of ten square leagues own- by the Powers estate and the Danas, and the balance of said middle third owned by the estate of Maria Josefa Cavazos; and said petition prayed for the appointment of a surveyor and commissioners to survey and ascertain said lines and for a decree of said court establishing the same, as will more fully appear from an inspection of the said record; and the defendants also filed in said suit an application (a copy of which is hereto attached, marked Exhibit B and made a part hereof), for an order of survey, to which for particulars reference is made; and an order of survey was accordingly made, and J. J. Cocke, the county surveyor of said Cameron county was

appointed to make the surveys, and in connection with three commissioners appointed to survey, ascertain and settle said dividing lines, according to the prayer of said petition and application, and to report their action to the court; and said surveyor and commissioners, having in all things complied with the law and the order of the court appointing them, did on December 28, 1888, make and file in said court in said suit their report of said surveys and all other duties in the order of their appointment and the law imposed upon them, and accompanied their said report with a map or plat of the Espiritu Santo grant and the survey thereof made by them, and filed said map or plat as a part of their report; and said report was by the final decree in said suit No. 1346, by said district court, duly made and entered on May 27th, 1889, in all things approved
448 and confirmed and made final; and in and by said final decree the dividing lines between the said thirds and subdivisions thereof of the Espiritu Santo grant, including the dividing lines between the Paredes tract and that part of the middle third owned by the estate of Maria Josefa Cavazos, were ascertained, fixed, settled and established; and the field notes of the survey of said grant and the dividing lines thereof were copied in and made a part of said final decree; and according to said survey and report, and map, and final decree, the said Paredes tract embraces more than one-half of Fort Brown reservation, and also nearly all of the permanent and valuable improvements thereon, and said decree remains of record in said district court, not appealed from, unreversed, valid and subsisting; and said decree fixing the boundaries of the Paredes tract, and the extent and quantity of Fort Brown reservation and improvements embraced in said tract is *res adjudicata*. The Thomas Carson administrator defendant in said suit No. 1346, and the estate of Maria Josefa Cavazos, represented by him therein, and the Thomas Carson administrator defendant in this present suit, and the estate of Maria Josefa Cavazos, represented by him herein, are the same persons and the same estate; and the decedent Maria Josefa Cavazos was the grantor of Charles Stillman, the father of the defendant James Stillman, through whom by mesne conveyances, the defendant Stillman claims to have acquired title to one-half of Fort Brown reservation, and being in privity with the estate of Maria Josefa Cavazos, the defendant Stillman is concluded by the final decree in said suit No. 1346; and plaintiffs further aver that under, and by virtue of a fraudulent and champer-ous contract, which will be more fully hereinafter stated, defendant Stillman actively coöperated with defendant Carson in the defense of said suit No. 1346, and especially in an effort to have the boundary lines of the Paredes tract so surveyed and established by the decree of court, as to unlawfully deprive the owner of said tract of a large portion thereof, and to unlawfully obtain
449 the same for the estate of Maria Josefa Cavazos, and also to prevent the line of the Paredes tract from being correctly established, so as to exclude by such survey from said tract the

whole of Fort Brown reservation; and defendant Stillman, having made himself a party in fact to said litigation, he is concluded by the final decree in said cause, independently of the fact of his being in privity of estate with Maria Josefa Cavazos, whose administrator and estate were parties to said suit. The plaintiffs are informed and believe that the report and map made by the surveyor and commissioners and filed by them in said suit No. 1346, and approved by the court, as aforesaid, have been extract- from the files and record of said suit; but the plaintiffs charge that defendant Carson has copies of the same.

2. And the plaintiffs aver and represent that after the district court of Cameron county, in said suit No. 1346, in said final decree of May 27th, 1889, had in all things approved and confirmed and made final the survey and report of the surveyor and the commissioners therein, by which more than one-half of Fort Brown reservation, was shown to be situated on the Paredes tract, the said court, by the procurement of said defendant Carson and others acting with him, and without the knowledge or consent of plaintiff C. B. Combe, executor, who was then the sole executor of Stephen Powers, deceased, inserted in said final decree a provision to the effect, substantially as follows: That neither the field notes of said Paredes tract, which were set out in said decree and made a part thereof, and which show that the lines of said Paredes tract were, by the survey made, as aforesaid, actually run and established through Fort Brown reservation to the Rio Grande river, nor the said survey itself, nor any line or lines thereof, made under the order of the court as aforesaid, nor the said final decree itself, nor any other order or proceeding, nor any pleading or testimony in said suit No. 1346, shall ever be used as evi-
dence for or against the owners of Fort Brown reservation in as-
450 certaining their respective rights therein. And the plaintiffs aver that the division line of the Espiritu Santo grant, surveyed and established in said suit No. 1346, as aforesaid, and the survey itself, were made and established in accordance with the outside boundary lines of said grant, as settled and fixed by the adjudication of the supreme court of the State of Texas, and of the United States, and also in accordance with the laws of the State of Texas, prescribing rules for the making of surveys of land, and which laws are rules of property and are binding upon all courts of justice sitting in this State; and the legal effect of said survey and order and decree and other proceedings must be determined by the laws of this State, and cannot be limited in the manner attempted, as aforesaid. And the plaintiffs further aver that the said survey was made and reported in substantial accordance with the prayer of the application for survey filed by the defendant Carson and other defendants in said suit, made Exhibit B hereto, which prayer is in the words follows:

"Wherefore defendants pray for an order of survey of the said tract of land, with instructions to the surveyor to follow the courses of the original survey and to meander the water courses constitut-

ing its northern and southern boundaries; to define and mark the western boundary thereof according to the said original survey, to ascertain and report as to the result of such actual survey, the effect if any, of the pretended cutting off of said gor-e to the eastward of said tract, by virtue of the judgments aforesaid; to report the contents of said tract with its eastern boundary as defined by said judgments, and the western boundary as fixed by the original survey, reporting separately the result of the meanderings of the streams forming the northern and southern boundaries thereof; that the surveyor be further ordered to divide the said tract into six equal parts, by lines running north and south from the Arroyo Colorado to
451 the Rio Grande, and marking the point where said lines terminate on the said river and arroyo by well defined and permanent land marks, conforming in the matter of numbering said sixths to the mode heretofore adopted and in use by the owners and occupants of the tract, and pointing out the difference, if any exists, between the courses run in making the original survey and those followed for the survey for the patent, and that said survey and report with a map of the tract be made and returned to the court as early as possible."

And no objections were made to the report, and defendants Stillman and Carson are now estopped to deny that the dividing lines of the middle third of said original grant were surveyed and established from the Arroyo Colorado on the north, through Fort Brown reservation to the Rio Grande river on the south, and that such lines are binding on them and the estate of Maria Josefa Cavazos.

VI.

1. The defendants Stillman and Carson pretend contrary to the fact, that prior to the year 1846, a partition of the Espiritu Santo grant was duly made between and among the owners thereof, in and by which that portion of the middle third of said grant, which embraces the whole of Fort Brown reservation, was set off to and became the sole and separate property of the decedent, Maria Josefa Cavazos, and at the time of the seizure thereof by military authority of the United States in 1846, she was the sole owner and in the exclusive possession thereof, and that she and those under whom she claimed, had been in peaceable and adverse possession of said premises for a period of more than ten years next before the 1st day of May, 1846, and before the commencement of the suit and the said action at law No. 248; and that by a deed dated March 25th,
452 1875, said Maria Josefa Cavazos conveyed to Charles Stillman an undivided one-half of a tract of land, including the whole of Fort Brown reservation, and also a half interest in all claims against the Government for use and occupation thereof, and that defendant James Stillman, by regular conveyances from the widow and heirs at law of Charles Stillman became the owner of said undivided one-half of the said reservation and claims for

compensation; all which pretenses plaintiffs aver to be untrue, and aver the truth in this regard to be as follows:

2. That aver that, from the date of the aforesaid deed, made by Francisca Cavazos, in the year A. D. 1817, to Jose Miguel Paredes to May 1st, 1846, all of that part of Fort Brown reservation situated on the Parades tract, as shown by the survey made in suit No. 1346 above stated, was in the exclusive and adverse and peaceable possession of said Paredes and his heirs and assigns and their grantees, claiming actually fee simple title to the same through the said deed back to the sovereignty of the soil, and was so in possession of said premises at the time they were forcibly seized by the United States military authorities; and the said Maria Josefa Cavazos never at any time owned as much as one-half of Fort Brown reservation and she never was at any time in possession of any part thereof. And the plaintiffs aver that from the year A. D. 1826, down to May 1st, A. D. 1846, at the time of said forcible seizure, all of that portion of Fort Brown reservation not embraced in the Paredes tract, was in the adverse possession of certain Mexicans who held and claimed the same under the city of Matamoros, Mexico, under titles then known as the ejidos or town lands of said city, and also then and afterwards known as labor titles, and which they claimed under the laws of the State of Tamaulipas, Mexico.

2. And shortly after said premises were forcibly seized and the military reservation established thereon, Charles Stillman,
453 who then lived in the city of Matamoros, and who is the father of defendant James Stillman, desiring to obtain and reap the compensation which the United States Government might be induced to pay for the reservation, and for the speculative purpose of reaping large profits from a small investment, purchased a number of the ejidos or labor titles, under which he claimed to be the owner of the reservation, to the extent covered by his said titles, and sought compensation from the United States Government, and continued to do so until some time during the year 1848, when, by the order and decree by the appropriate tribunal of the State of Tamaulipas, the said ejidos or labor titles were held and declared null and void.

3. And the labor titles of Charles Stillman having been declared void he, on October 12, 1850, through Basse & Hoard, entered into contract with Dr. Rafael Garcia Cavazos and Maria Josefa Cavazos, by which he, Charles Stillman, agreed to pay one-half of the costs and expenses which should be incurred in prosecuting suits on behalf of Maria Josefa Cavazos, for the title of the whole of Fort Brown reservation, and compensation therefor from the Government, and also one-half of all the costs and expenses of prosecuting suits for the recovery of a large part of the Paredes tract, which he did not in fact own, and to which he had no claim of title; and in consideration thereof, the said Maria Josefa Cavazos agreed to convey to him, Charles Stillman, an undivided one-half of Fort Brown

reservation and assign to him one-half of the claim for compensation for use and occupation thereof.

And the plaintiffs aver that at the time said last mentioned contract was made, the said parties thereto well knew that Maria Josefa Cavazos owned less than one-half of said reservation, and that the greater portion of the tract was owned by the owners of the Paredes tract; and said contract was covinous and champertous, and the deed of March 25, 1875, made by Maria Josefa Cavazos to
454 Charles Stillman, and under which defendant James Stillman claims in this suit was made pursuant to and in accordance with said contract of October 12, 1852; and neither Charles Stillman nor defendant James Stillman have ever paid anything for said deed, except such sums of money as they may have paid out as the costs and expense of litigation under the aforesaid agreement. And on August 7, 1885, Pedro G. Cavazos, acting for himself and for the estate of his mother, Maria Josefa Cavazos, entered into an agreement with defendant James Stillman, in which it is recited that the said deed — March 25th, 1875, was made by Maria Josefa Cavazos to defendant Stillman in accordance with the said contract of October 12, 1852; and in said last named agreement it was stipulated that Paulina Echeverria, as the joint attorney in fact of both parties, should collect the $160,000 theretofore appropriated by the Government to pay for Fort Brown reservation, and that out of it $16,000 should be paid to William Brady and $50,000 should be paid to defendant Stillman, and $50,000 should be paid to Pedro G. Cavazos, on account of the estate of Maria Josefa Cavazos, and that the balance of $44,000 should be deposited with the Central Trust Co. of New York, as a special deposit to await an adjustment of account between said parties, as in the contract specified. And the plaintiffs aver that the claim of defendant Stillman that he acquired title to one-half of Fort Brown reservation and is entitled to one-half of the compensation of one hundred and sixty thousand dollars, is not made in good faith, and said claims are based upon pretended title and upon champertous contracts, agreements and deeds; and they charge as evidence of their averment in this behalf the existence of the original of said contract of October 12, 1852, the deed of March 25th, 1875, and the contract of August 7th, 1885, and that the same are in the possession of defendant James Stillman. (A copy of said agreement of August 7th, 1885, is hereto attached marked Exhibit D and made part hereof.)

4. And as showing the bad faith of defendant James
455 Stillman in making claim to ownership of one-half of Fort Brown reservation, and a like portion of the fund of one hundred and sixty thousand dollars in controversy in this suit, the plaintiffs charge that he has wholly repudiated his said contract with the estate of Maria Josefa Cavazos, and has never permitted her estate to receive the benefit of any part of said fund of one hundred and sixty thousand dollars, all of which was collected by one Garver, as the joint attorney in fact of defendants Stillman and

Carson, and defendant Carson, while pretending to act as administrator of the estate of Maria Josefa Cavazos, has in fact acted with defendant Stillman in defrauding and depriving said estate of any and all benefit of said fund; under the judgment of July 14, 1887, entered in said suit No. 248, it was not possible for defendant Stillman to collect said fund without the receipt and acquittance of Carson, administrator, and Carson, as administrator, gave his power of attorney to Garver, the attorney and counsel of Stillman, authorizing him to receive and receipt for said fund, without taking any precautions whatever to secure the rights of the estate which he pretends to represent, and fraudulently permitted Stillman to obtain the control of the whole of said fund and to appropriate it to his own use and benefit.

5. And as further showing the want of good faith of defendant Stillman in making claim to said reservation and fund, and the unfair and inequitable nature of his claim, and his wrongful conduct in dealing with the fund after he had collected it, and his utter repudiation of his contract (Exhibit D to original bill) with plaintiffs in regard thereto, and his repudiation of his said contract with Maria Josefa Cavazos, and as showing the existence of a fraudulent conspiracy between defendants Stillman and Carson to deprive all of the owners of said fund of their interest therein, the plaintiffs allege and charge that defendant Stillman pretends that he
456 has, in good faith, appropriated the whole of said fund of one hundred and sixty thousand dollars; as follows:

To his attorneys Shearman & Sterling, fees $25,000, and disbursements $1,818.98; to Wm. Brady $20,000 fees; to J. Hale Sypher, $5,000 fees; to reimburse sums disbursed by Charles Stillman between 1850 and 1872, and sums disbursed by himself since 1872, on account of fees and expenses in prosecuting the suits and claims of himself and Maria Josefa Cavazos to Fort Brown reservation and fund and other lands in Cameron county, Texas, claimed by Maria Josefa Cavazos, aggregating in principal $51,822.99; and accumulated interest thereon $76,000.00, making a total principal and interest for fees and expenses for prosecuting said suits and claims of $127,822.99, and making a grand total of $179,641.92, besides $8,101.02 paid for taxes, and $80.00 costs of New York exchange on $160,000.00. And the plaintiffs aver that if any of such disbursements were made by Charles Stillman and defendant James Stillman, which is not admitted, they were made pursuant to the aforesaid champertous contracts and deed, and in the prosecution of a wrongful conspiracy, with intent to unlawfully deprive the estate of Stephen Powers and his devisee, and those through whom they claim of their lawful rights and interest in said reservation and fund: and said pretended disbursements cannot in equity be charged against the interest of the Powers estate in said fund, and more especially as said fund was collected by defendant Stillman as a trustee, and held by him as a trust fund, and by the instrument creating

said trust he was restrained and prohibited from applying any part of the fund to any claim, debt or disbursement whatever.

VII.

1. The defendants Stillman and Carson pretend contrary to the truth, that the district court of Cameron county, Texas, on
457 or about February 20, 1879, entered a valid judgment, condemning the premises known as Fort Brown reservation, to the use of the United States, and directing that the compensation to be paid therefor should be paid either to the estate of Maria Josefa Cavazos or the city of Brownville, as the Supreme Court of the United States should decide a certain suit then pending before it in favor of the one or the other of said parties; and that the appropriation by the Government of $160,000 to pay for the premises was based on said judgment, but the plaintiffs allege the truth in this regard to be as follows:

In the year 1853, Van Vliet, assuming to act for the United States, instituted in the district court of Cameron county, Texas, proceedings to condemn to the use of the United States, the premises known as Fort Brown reservation, under an act of the legislature of the State of Texas, approved December 19, 1849, and such proceedings were had that on November 29, 1853, the verdict of a jury was obtained, assessing the value of the premises at $50,000; but the title to said premises were then in dispute, and no judgment was then rendered and entered on said verdict, and the United States then and there abandoned said proceeding and refused to avail themselves of the benefit thereof, and refused to pay the amount found by said verdict or any part thereof, and refused to receive title to said premises through said proceedings, and on February 20, 1879, upon the application of Pedro G. Cavazos, the said district court of Cameron county entered a judgment upon the aforesaid verdict for $50,000 with interest thereon from November 29th, 1853, to the date of entry; said judgment was and is absolutely null and void, because no notice thereof was served upon the United States, nor upon anyone authorized to represent them, and said judgment was wholly disregarded by the Government, and no payment was ever made thereunder; and neither the plaintiffs nor any person under whom they claim were parties to said proceeding.

458 And the plaintiffs aver that the United States Government did not acquire the title to Fort Brown reservation under and by virtue of said condemnation proceeding under the act of the legislature of the State of Texas of December 19th, 1849, nor under any other condemnation proceeding; but it, the Government, acquired title to said premises by purchase under the act of Congress of March 3rd, 1885, through the agreement of July 13, 1887, and the judgment in said action at law No. 248, rendered July 14, 1887, and the deeds and releases of defendants Stillman and Carson made pursuant thereto, as set out in the original bill; and the fund of one

hundred and sixty thousand dollars collected by said defendants from the Government was paid to them upon the faith and title so acquired, and upon that alone, in accordance with the approval of said title by Hon. A. H. Garland, Attorney-General of the United States, in his opinion and recommendation to the Secretary of War, of date December 22, 1887, and the said Attorney General, in his opinion and recommendation upon the same subject, to the Secretary of War, of date January 16, 1886, advised that, "the provisions of the act of March 3, 1885, do not authorize acquisition of title through the exercise of the eminent domain power of the Government." And the amount of the compensation as fixed by said act was arrived at by a general estimate of the whole claim and not by any separate and specific value of the fee of the land and its use and occupation by the Government.

VIII.

1. To the end, therefore, that the said defendants James Stillman and Thomas Carson may, if they can, show why the plaintiffs should not have the relief hereby prayed, and the relief prayed in the original bill, and the amended bill heretofore filed and may,
459 (but not upon oath, the oath being hereby waived except as to the interrogatories below propounded to them, and which they are required to answer on oath) according to the best and utmost of their several and respective knowledge, remembrance, information and belief full answers make, to all and singular the premises and allegations of this amended bill, fully and particularly as though the same were repeated, and they specially interrogated thereto, paragraph by paragraph, with sums, dates and all the attending circumstances and incidental transactions; and that they, the said defendants Stillman and Carson may upon their several respective corporal oaths, and according to the best and utmost of their several and respective corporal oaths, and according to the best and utmost of their respective knowledge, remembrance and belief, full, true, direct and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether defendant Carson ever saw, or ever had in his possession the report and map of the surveyor and of the commissioners herein-bove referred to in said suit No. 1346, and when and where he last saw them, and when and where he last had them in his possession, and from whom he obtained them, and what he did with them, and in whose hands and possession he last saw them, and if he now knows where they are, and if he has copies of same, and if so who made such copies and when and where and where such copies are now?

2. Whether or not either of the defendants Stillman and Carson has in his possession or under his control, or in their joint posses-

sion, or under their joint control, or in the possession or under the control of their agents, the original or copies of the following papers, to-wit: (1) The agreement of date October 12, 1850, between Dr. Rafael Garcia Cavazos and Maria Josefa Cavazos on the one part, and Basse & Hord of the other part (mentioned in an agree-
460 ment dated August 7, 1885, between Pedro G. Cavazos and defendant Stillman); (2) the deed of March 25th, 1875, made by Maria Josefa Cavazos to Charles Stillman, and under which defendant James Stillman claims in this suit; (3) the aforesaid agreement made August 7th, 1885, between Pedro G. Cavazos, acting for himself and the estate of his mother, and James Stillman, defendant, a copy of which is made Exhibit D hereto, and whether or not said exhibit is a correct copy of the original? And if you have not the originals, who has them, if you know, and was either of said papers ever recorded in Cameron county, Texas, and if not, why not, and if either or any or all of them were ever recorded in said county, when and where?

3. Whether defendant Stillman has ever paid to Maria Josefa Cavazos, or to her heirs or estate, or to defendant Carson, administrator of her estate, any cash or money or property, or other valuable thing, as and for the consideration of her aforesaid deed to him of date March 25th, 1875, and if so what, how much, when and where and in what manner, and whether by check, draft, or otherwise? And what was in truth and in fact the true consideration of said deed?

4. Whether defendant Stillman has ever paid to the estate of Jose Maria Cavazos or to defendant Carson any part of the one hundred and sixty thousand dollars collected by him for Fort Brown reservation?

5. Whether defendant Stillman has not openly repudiated his obligation contained in said agreement of August 7th, 1885, to pay out of the Fort Brown fund, as soon as collected $50,000 to Pedro G. Cavazos, for his account, and for the account of the estate of Maria Josefa Cavazos? And whether defendant Stillman does not now claim that said estate is entitled to receive no part of said fund? And whether defendant Carson has not acquiesced in said act and claim of Stillman? And whether defendant Carson has made
461 any effort to obtain any part of said fund for the estate of Maria Josefa Cavazos, and if so, what, and whether it is the common purpose of defendants Stillman and Carson to defeat altogether the claim of the estate of Maria Josefa Cavazos and all other persons except Stillman, to a part of said fund?

IX.

i. And the plaintiffs pray for (1) all the relief prayed for in their original bill and the amendment heretofore filed, and (2) *and* that defendant Stillman be compelled to pay over into the hands of the receiver herein the said fund of one hundred and sixty thousand

dollars, (less the amount paid for taxes), with interest thereon from the date of its collection, and (3) that the defendants Stillman and Carson be compelled to make full and complete discover- of all matters herein alleged, and (4) that plaintiffs have all necessary and proper interlocutory decrees, orders, writs and processes that may be necessary or proper in the prosecution of this suit, and they will ever pray.

(NOTE.—Defendants Stillman and Carson are both required to answer on oath interrogatories 1, 2, 3, 4 and 5).

C. B. COMBE, *Ind. Ex'r,*
STEPHEN POWERS, *Deceased,*
C. B. COMBE,
FREDERICK J. COMBE,
CHARLES B. COMBE, JR.,
F. B. COMBE,
JOSEPH K. COMBE,
EMILE P. COMBE, *Plaintiffs,*
By C. L. BATES, *Their Agent,*
W. N. PARKS,
Solicitors for Plaintiffs.

C. L. BATES,
Counsel for the Plaintiffs.

462 EXHIBIT A.

THE STATE OF TEXAS, }
County of Cameron. }

In the District Court of Cameron County, Texas, to September Term, 1883.

No. 1346.

To Hon. John C. Russell, judge of the 25th judicial district of the State of Texas, sitting and holding court in and for the county of Cameron, in said district:

Mifflin Kenedy, Richard King, Mrs. B. Cooper, surviving wife in community and sole executrix of Joseph Cooper, late of the city and parish of Orleans, State of Louisiana, deceased, Mrs. Marie Dana, *née* Grogan, and her husband, Charles S. Dana, Benjamin O. Hicks and Charles B. Combe, executors of the will of Stephen Powers, late of Cameron county, Texas, deceased, James G. Browne, Alexander Werbiskie, Celestine Jagou, John S. Cross, M. H. Cross, G. Follain, A. Marion, Lino Saldaña, Angela Agunie and her husband Abraham R. Agunie, Mrs. Hilaria G. de Carazos, executrix of the will of Sabas Carazos, late of Cameron county, Texas, deceased, Refugia Carazos de Olvera, Carmen Cortina de Treviño and her husband,

Felipe Treviño, complaining of Thomas Carson, administrator of the estate of Maria Josefa Carazos, late of Cameron county, Texas, deceased. Genovera Garza de Ramirez, Casimiro Tamayo, Felipita Tejuina, Rafael Morales, Victoriano Fernandez, Amasa Sprague and his wife, Mary Ann Sprague, to your hinor respectfully shows:

That plaintiffs Mifflin Kenedy and Richard King are residents of the county of Nueces in the State of Texas; that the plaintiff Mrs. B. Cooper, is a resident of the city of New Orleans parish of Orleans and State of Louisiana; that the plaintiffs Mrs. Marie Dana, *née* Grogan, and her husband, Charles S. Dana, are residents of the city of Boston, county of Norfolk and State of Massachusetts; that *that* the plaintiffs James G. Browne, Alexander Werbiskie, Benjamin O. Hicks, Charles B. Combe, Celestine Jagou, A. Marion, Lino Saldaña, Mrs. Hilaria G. de Carazos, Mrs. Refugia Carazos de Olvera, Mrs. Carmen Cortina de Treviño and her husband, Felipe Treviño, are each and all residents of the county of Cameron in the State of Texas; that John S. Cross, M. H. Cross, G. Follain, Mrs. Angela Aguine and her husband, Abraham R. Aguine, are each and all residents of the city of Matamoras, State of Tamaulipas and Republic of Mexico;
463 and that the defendants Thomas Carson, Casamiro Tamayo, Felipita Tejerina, Genoriva Garza de Ramirez, Rafael Morales and Victoriano Fernandez, are each and all residents of the county of Cameron, State of Texas; that the defendants Amasa Sprague and Mary Ann Sprague, his wife, are residents of the city of Providence, county of Providence, State of Rhode Island.

That plaintiffs and defendants are the owners in common *are the owners in common* of the entire tract or grant of land in the county of Cameron and State of Texas, commonly and generally and especially known as the "Espiritu Santo" tract or grant, originally granted by the Spanish government to José Salvador de la Garza, and being confirmation No. 42, for the county of Cameron, under an act of the legislature of the State of Texas, entitled,—"An act to relinquish the right of the State to certain lands therein named," approved February 10th, 1852,—said grant since patented by the State of Texas.

That said Espiritu Santo grant or tract is bounded on the front by the Rio Grande river, and extends back from said river to the Arroyo Colorado; which Arroyo forms the back boundary line of said grant; that is bounded on its lower boundary line by the three grants known respectively, as the "San Martin," the "San Isabel," and as the "Buena Vista," and on its upper boundary line by the grants known respectively, as the "San Pedro de Carricitos" and the "Concepcion de Carricitos."

That said grant of "Espiritu Santo" contains about fifty-four and three-quarters (54¾) leagues of land, a little more or less, as nearly as can be now ascertained.

That, while heretofore, no legal or binding partition or division survey whatever of said tract was or has ever been made, still, for convenience of the different holders and owners of said tract, and

to prevent as far as might be, continual conflicting possessions and claims of right, and for the more advantageous and *and* quiet use and occupation of said tract, it has been generally understood that as far as might be done, consistently with the rights and interests of all concerned, said whole tract would be generally subdivided into three grand subdivisions of one-third each of said whole grant, each to have equal frontage upon the Rio Grande river, and to extend back between parallel lines as near as might be, to the Arroyo Colorado for quantity,—and that each of said three grand subdivisions named be again divided in the same manner, this
464 subdividing the said whole grant into six (6) equal parts, equal as far as may be, in river frontage and rear and quantity.

1. That commencing from the lower side of said tract, the first one-sixth of said grant, as generally understood, is held by the said James G. Browne, to the extent of the lower half of said sixth, and he is the owner of said proportion of said whole tract, less one thousand acres held and owned by the said Casimiro Tamayo, to the extent of seven hundred acres,—and of the said George Binlay, to the extent of three hundred acres, occupying the river front of said one thousand acres aforesaid, Binlay and Tamayo. And that the upper half of said lower one-sixth of said whole grant is held jointly by the said King, Kenedy and Cooper, and they are the owners of that proportion of said whole tract.

2. That the next one-sixth of said whole grant, as generally understood, is held jointly by the said King, Kenedy and Cooper, Browne and Werbiskie, in the proportion of one-half to the said King, Kenedy and Cooper, and one-fourth of said sixth each to the said Browne and Werbiskie, respectively, and the said King, Kenedy and Cooper, Browne and Werbiskie, are the owners in the said whole tract of said respective proportions, less six hundred and forty acres known as the "Esperanza" ranch, which is held and owned by the said plaintiff Celestine Jagou, and which said six hundred and forty acres, in quantity or moneyed value, is to be adjusted as shall be right and just, in this partition in proportion to the amount received by the respective persons benefitted by the purchase money received for said "Esperanza" tract.

3 and 4. That, continuing the same order, the third and fourth sixths of said whole grant, or tract, to-wit, one-third of said whole grant is, generally understood, held by the said Thomas Carson, administrator of Maria Josefa Carazos, deceased, and by B. O. Hicks and Charles B. Combe, executors of Stephen Powers, deceased, and by the said Mrs. Marie Dana and her husband, Charles S. Dana, and by the said John S. Cross and M. H. Cross, and by the said Lino Saldaña, in the proportion of the lower ten (10) leagues of said two-sixths jointly, in one body to the said Marie Dana and Charles B. Dana and said Benjamin O. Hicks and Charles B. Combe, executors, and the remainder of the said two-sixths, to the said Thomas Carson, administrator, etc., less about six hundred acres to the said John S.

Cross and M. H. Cross, to be laid off at and around their
465 present ranch of "Aqua Negra," and about three hundred and seventy acres to the said Lino Saldaña, to be laid off around his present new ranch site; and the said respective parties are the owners, respectively, of the said proportions of said whole grant.

5. That continuing in the same order the fifth sixth of said whole tract is, as generally understood, held by the said Marie Dana and her husband, Charles S. Dana, and the said Benjamin O. Hicks and Charles B. Combe, executors, etc., and the said A. Marion and G. Follain and the said Alexander Werbiskie and the said Mrs. Angela Aguirre and her husband, Abraham Aguirre and the said Victoriano Fernandez and the said Felipita Fejerina and the said Mary Ann Sprague and her husband Amasa Sprague, and the said Rafael Morales. In the proportion of one-half league and about two hundred and fifty acres additional to the said Hicks and Combe, executors, and one-half league to the said Mrs. Mary Ann Sprague and Amasa Sprague, and about two thousand acres, more or less, jointly, to the said A. Marion and G. Follain,—and the said Marie Dana and her husband Charles S. Dana, two-sevenths (2 / 7) of said sixth part of said whole grant, first deducting from said sixth about five thousand five hundred acres. And the said Mrs. Dana and husband two hundred and fifty acres additional. And the said Felipita Tejerina one-seventh (1 / 7) of said sixth of said whole grant, first deducting from said sixth about five thousand, five hundred acres. And the said Alexander Werbiskie, three-sevenths (3 / 7) of said sixth of said whole grant, first deducting about five thousand, five hundred acres and the river front labor of Dona Carmen Flores, in addition to the said Werbiskie. And to the said Victoriano Fernandez about one-half league, more or less. And to the said Mrs. Angela Aguiere and Abraham Aguiere, her husband, about three hundred acres of river front labor known as the "Prietas" ranch. And the said Rafael Morales the small labor now occupied by him. And the said respective parties are the owners respectively of the said proportion of said whole grant.

6. That continuing in the same order, the last remaining and upper sixth of said whole grant is, as generally understood, *is* held by the said James G. Browne and the said Hilaria G. de Carvazos, executrix, etc., and the said Mrs. Refugia Cavazos de Olvera and the said Mrs. Carmen Costina de Treviño and her husband, Felipe Treviño in the proportion of one-fourth of said sixth of
466 said whole grant, and in additional her "potrero" to the said Mrs. Hilaria G. de Carazos, executrix, etc., first deducting from said sixth, one league. And the said Mrs. Refugia Carazos de Olvera, one-fourth of said sixth, deducting therefrom two leagues of land. And the said Mrs. Carmen Costina de Treviño and Felipe Treviño, her husband, one-fourth of said sixth, first deducting one league. And the said James G. Browne one-fourth of said sixth, first deducting one league, and in addition thereto, two leagues, one

of which as set out and bounded in their deed from the former heirs and owners of this proportion of the whole grant, is known as the "Allen and Hale league." And the other league to front on the Arroyo Colorado, and extends back for quantity, was purchased by the said Browne from the said Mrs. Refugia Carazos de Olvera. And the said respective parties are the owners of said proportions of said whole grant.

Plaintiffs further allege that at different times and continuously up to the present, the different owners in common of said whole grant, parties plaintiff and defendant hereto, have collected rents and tolls or "monte," for the privilege of cutting wood upon the lands involved herein, and sold large quantities of wood, the growth of said land and other and various fruits and revenues of said lands, to a large amount, and that the amounts so collected have never been in any manner divided, equalized or adjusted, or the amounts in excess of the due proportion of some of said owners so collected and received by them, have in no manner been paid to the other co-owners of said tract, to whom they were justly due as proceeds of their proportion of said lands.

The premises considered, plaintiffs pray that all the parties-defendant hereto may be duly cited according to law to answer this petition at the next regular term of your honor's court; that upon a hearing hereof, said lands be adjudged subject to partition as set out and prayed herein, and that each and all of the parties hereto, plaintiffs and defendants, account fully for all the rents, profits, issues and generally for any and all monies received by them in any manner accruing or arising from the lands in question herein; that the said lands in question herein be partitioned and set apart to each of the owners thereof in severalty by dividing said whole tract into three grand subdivisions, each to comprise one-third of said whole tract, with equal front on the Rio Grande river, and
467 extending back between parallel lines as nearly as practicable to the Arroyo Colorado for quantity; that the upper and lower third so set apart be again subdivided in the same manner as to form equal sixths of said whole grant or tract, and that from the lower side of the central third of said whole tract or grant be taken in the same manner, the ten leagues belonging jointly to the said Mrs. Marie Dana and her husband, Charles Dana, and Benjamin O. Hicks and Charles B. Combe, executors of the estate of Stephen Powers, deceased. And that no further or more additional division or partition be now made of said whole tract or grant; that the said moneys so collected by the different parties hereto arising from said lands be divided among all of the respective parties hereto as justice and equity may require, and that in so far as any of said parties may be found indebted, such sum so due by them may be decreed to be a special lien and charge upon the portion of land belonging to the said party so indebted.

That J. J. Cocke, county surveyor of Cameron county, be appointed by the court to do all such surveying and make all such measure-

ments, and to have cut and fixed all such lines, as may be necessary in the premises; that writs of partition may issue as provided by law and that three disinterested persons may be appointed commissioners to make said partition, acting in conjunction with said surveyor; that the due and just share and proportion of all costs incurred herein, or incident hereto, of each party hereto, be adjudged a lien upon the share of said respective party, and execution issue thereof. And for all further and other general relief to which in law or equity the respective parties hereto may be found entitled, and they will ever pray, etc.

M. KENEDY,
R. KING,
MRS. B. COOPER ET ALS., *Plaintiffs*,
By WELLS AND RENTFRO,
Their Attorneys.

(Endorsed:) No. 1346. M. Kenedy, R. King *et als.*, *vs.* Thomas Carson, administrator, *et als.* Plaintiffs' original petition. Filed this the 8th day of June, A. D. 1883. Louis Kowalski, dist. cl'k c't Cam. Co., by Jules Lucadou, deputy.

468 THE STATE OF TEXAS, }
County of Cameron. }

I, Louis Kowalski, clerk of the district court of Cameron county, Texas, do hereby certify the above and foregoing is a full, true and correct copy of plaintiffs' original petition, with all endorsements thereon, filed in cause No. 1346, wherein M. Kenedy, R. King, *et al.*, are plaintiffs, and Thomas Carson, administrator, *et als.*, the defendants, as taken from the original on file in my office.

To certify which witness my hand and official seal, this 4th day of October, A. D., 1898.

LOUIS KOWALSKI,
[SEAL.] *Clerk District Court, Cameron Co., Texas.*

469 EXHIBIT B.

M. KENEDY, R. KING, ET ALS. *vs.* THOMAS CARSON, Adm'r, ET ALS. } No. 1346. Suit Pending in the District Court of Cameron County, Texas.

Now come the defendants in the above numbered and entitled cause by their undersigned attorney, and show to the court that the subject matter of said suit is the partition of a certain tract of land situated in the county of Cameron, known as the Potrero del Espiritu Santo, granted in sale by the Crown of Spain to Don. Salvador de la Garza, on the 26th of September, 1781, for and as containing by a

survey made thereof, for the purpose of making, and prior to the making of said grant in sale, fifty-nine sitios or leagues and eleven caballerias of land.

That in a survey of the said tract made for the purpose of obtaining a patent of the same, its superficial area was ascertained and declared to be sixty-four leagues and five $\frac{647,875}{1,000,000}$ labors of land. That in pursuance of the field notes of said survey, and in accordance with the provisions of the act of the legislature of this State, approved February 10th, 1852, relinquishing the claim of the State to lands situated between the Rio Grande — Nueces river-, a patent was issued to the heirs of the said original grantee, dated June 21st, 1859, the said patent setting forth the said tract as containing sixty-four leagues and five $\frac{647,875}{1,000,000}$ labors of land.

Defendants further show that the petition for partition in this case fails to set forth the description of said land by the field notes of either the first or second official survey thereof, as aforesaid, but refers to the same merely as the Espiritu Santo tract, and as containing about fifty-four and three-fourths leagues.

That heretofore, to-wit: at Brownsville, in the said county of Cameron, on or about the 9th day of April, 1852, in the district court of the State of Texas, for said county, a suit was instituted entitled Cavazos *vs.* Treviño, in which a controversy existed as to the true lin*d* bounding the said tract on the east, and at the same time a similar suit was instituted in the Federal court between the same parties, involving the same issues as to said eastern boundary
470 line. That both of said suits were pending undecided on appeal to the Supreme Court of the United States, and the supreme court of the State of Texas, at the time the said patent was issued, to-wit: on the 21st of June, 1859.

That a judgment was rendered in one of said causes by the Supreme Court of the United States in the year 1867, and a judgment in the other by the supreme court of the State of Texas, in the year 1871. That said judgments coincide as to the line constituting the eastern boundary of said tract. That it is claimed that by virtue of said coinciding judgments, the contents of said tract has been diminished about ten leagues, but the fact has never hitherto been ascertained or declared by an actual survey of the premises. That the said diminution of the contents of the area of said tract is pretended to have been caused by the cutting off of a gore to the eastward by changing the eastern boundary line from a course magnetic north to one true north.

That the contents of said tract of land can only be ascertained by a survey of the same. That defendants hereto annex a copy (translated) of the original field notes of the survey thereof made in the year A. D. 1781, marked A, and also a copy of the field notes included in the patent, date June 21st, 1859, which they pray may be taken and considered as a part of this application.

Wherefore, defendants pray for an order of survey of the said tract of land, with instructions to the surveyor to follow the courses of the original survey and to meander the water courses constituting its northern and southern boundaries; to define and mark the western boundary thereof according to the said original survey, to ascertain and report as to the result of such actual survey the effect, if any, of the pretended cutting off of said gore to the eastward of said tract by virtue of the judgments aforesaid; to report the contents of said tract with its eastern boundary as defined by said judgments and the western boundary as fixed by the original survey, reporting separately the result of the meandering of the streams forming the northern and southern boundaries thereof; that the surveyor be further ordered to divide the said tract into six equal parts, by lines running north and south from the Arroyo Colorado to the Rio Grande, and marking the points where said lines terminate on the said river and arroyo by well defined and permanent land-marks, conforming in the matter of numbering said
471 sixths to the mode heretofore adopted and in use by the owners and occupants of the tract, and pointing out the difference, if any exist between the courses run in making the original survey and those followed in the survey for the patent, and that said survey and report with a map of the tract be made and returned to the court as early as possible. And that —— —— be appointed the surveyor to make said survey and report.

F. E. MACMANUS,
Att'y for Def'ts.

January —, 1884.—This application granted and order made appointing —— —— surveyor, to make said survey.

J. C. RUSSELL,
Judge 25th Jud. Dist.

472 "A."

Espiritu Santo, Cameron County, Texas.

Field notes, page 130, paragraph 302.

Survey made in July, 1781, by D. Manuel Sierratta, 59 sitios or leagues and 11 caballerias.

In the said estate named the Espiritu Santo, on the first day of the month of July, in the aforesaid year, I, the aforementioned judge, in consideration of the completion of the actual inspection (*vista de ojos*) of the said potrero, and inasmuch as no opposing circumstances has been raised to impede or prevent the survey and examination (*reconocimiento*) of its lands as is ordered to me, in consequence thereof it is my duty to order, and I do order to pass to its execution and it must begin from a watering place (*abrevadero*) that there is

on the Rio Grande, where it forms a corner with the fence which runs to this place, from the north to the south, which is the line of the thicket, which proceeds (*comes*) from the Arroyo Colorado in the same direction, and for its proper effect, I set it down in this official statement before me and the witnesses with whom I act, as an examining court as has been said,—which I certify.

JUAN ANTONIO DE ECHAV.

473 *Survey.*

In the watering place above mentioned of the Rio Grande del Nort, being in it on the second day of the said month and year, I the aforesaid judge, accompanied by assisting witnesses, adjoining proprietors and neighbors (*colindantes y circumvecinos*) as well within as without those already named for the actual inspection, I ordered D. Manuel Surrato, the surveyor nominated and sworn in due form for this survey, to begin to exercise his office, and he, before me, the witnesses and the other persons present as aforesaid, took a staff of the usual length, and attaching to it one of the ends of the measuring cord (*cordel*) prepared for this purpose, measured away from the said staff and gave the cord fifty varas in length, the vara being that used to measure cloth in Castile, and the one customary in this province of New Santander, and having measured off the said fifty varas, he attached the said cord at the place where they ended to another staff of the same size, so that between both there were only measured the said fifty varas, and setting a compass, he ran this first from the aforesaid watering place, course east, going in a straight line along the meanders of the said Rio Grande down the stream arriving with five hundred and eighty-four " cordellas " (measuring fifty varas each) at the aforesaid river at a St. (dename) from it, by which in its freshets it fills with water a tank (*tanque*) which was left above (*que quedo por la parte de arriba*) at a distance of six cordeles, which — was left as a natural land mark (por lindero) in which place I ordered the denunciante, D. José Salvador de la Garza, to establish a more exact (fixed) mark (mas señal fija) as a corner (mojonera); there remaining on this line, towards the south some recesses and elbows (bolsas y recodos) which the bends of the above mentioned Rio Grande formed, that the surveyor said he would notice, after completing the other lines in order to include in entire amount of the square leagues (sitios) those which might be in the said bends and elbows.

This line being concluded up to the said place of the —, I have set it down in this official statement, which as well as the said surveyor and interested party, as the rest of the adjoining proprietors and neighbors who are knowing to these facts, having signed before
me and the assisting witnesses acting as an examining tribu-
474 nal as has been said all of which I certify.

Continues.

In the said place of the — of the river in which ended the first line, on the third day of the said month and year, before me, witnesses and the other persons, the said surveyor measured the said surveying cord, making it, as he had made it, fifty varas in length, by the aforementioned vara for measuring cloth in Castile, as upon the foregoing day, and setting the compass, he ran this second line straight to the north and at two hundred and six cordeladas, we came to the head of one of the lag*nu*as of the sea, besides others that were seen to the east, and having gone around the head of this first one, and various others that succeeded commenced eating with each other, following always the north course, the surveying cord came into a bend or little pocket, which the said lagunas make, there being on the west and east until they reach the "Lagunas Madres," which are formed by the Arroyo Colorado, and in which its waters empty and flow, there being far within this line, something more than a league, a place improved (poblado) with homes (hacales) and cattle pens, named San José de Retiro, where are living some herdsmen (vaqueros) servants of the aforesaid Don. José Salvador de la Garza, and there being no more land on account of our having reached the said "Lagunas Madres," and having nothing before us but water, the second line amounted to nine hundred and ninety-three cordeles in the whole, and the cord having been measured over again several times in the distance ran, as was also done on the first day, all of which I set down in this official statement, which the surveyor and interested party and the others who accompanied us, and were knowing to the facts, have signed before me and the witnesses with whom I act, as has been stated, all of which I certify.

Continues.

In the place on the bank of the Arroyo Colorado where it begins and expands its broad lagunas (Lagunas Madres) at which place we arrive by going round and even wading through the water of the lagunes, that we had to the west of the second line, where we entered it, the bend or little pocket before mentioned, which thus remained a natural land-mark, together with an artificial one (señal) which was placed there, while at the same
475 time another placed where this third line began by measuring from one to the other within the Potrero del Espiritu Santo, at a distance from the lagunes, which circumstance induced us to execute the survey in this way, on account of finding no firm ground or foothold there (ningun paso) in which place before me witnesses, the denuncient, and others already mentioned; the surveyor again measured his cord, which he made fifty varas from staff to staff by the same vara as aforesaid, and setting his compass, begun his third line along the margin of the said creek (arroyo) up the stream; course west and at three hundred and nine cordeles, the aforesaid surveyor noticed that the said creek turned south as though

crossing the Potrero del Espiritu Santo, on which account following the said course to the south as well as the said creek permitted keeping always near its banks, at a distance of a hundred cordeles, it was found impossible to follow any line further on account of the country being inundated by a large lake, and little stream (running into) tributaries of the Colorado, into which they emptied their waters; also by a dense and impassable thicket which joined the said Arroyo Colorado and lake, which entirely prevented running of this line, but those experienced and well acquainted with the bends which the said arroyo made, declared that some distance beyond the place we were compelled to stop, the aforesaid arroyo again turned to the west as to which line the surveyor agreed with the experts and interested party that it ought to have and did have the same number of varas in length as the front line on the Rio Grande; that is five hundred and eighty-four cordeles, on account of the second line running along the lagunes (or the second line of the lagunes) (la segunda linea de lagunas) from the south to the north and by our actual inspection (vista de ojos) these correspond to it, for the fourth line, one from the north to the south as indeed the fence upon this line shows, and on account of this calculation, the interested party was ordered to establish an artificial land-mark which might serve as a corner (señal que serviera de mojonera) and this official statement all the proper persons and those who were knowing to the facts, have signed before me, and the witnesses with whom I act as an examining tribunal, as has been said, all of which I certify.

476 Continues.

In the aforementioned place of the thicket and the lake, which prevented the running of the third line aforementioned, as has been said, which line was concluded (or came to an end) (se conclayó) on the seventh day of the said month and year, the fourth line followed on the eighth day succeeding in the present and aforesaid month, and as to this last line it was likewise impossible to follow it up with the surveying cord, on account of the impenetrable nature of the thicket, the lakes and drains (resacas) which interwoven with the said thicket, made it difficulty, by the necessity of deviating from the straight course (por ir dando vuelta) in most of the said line, but it was agreed by the experts and the intelligent men who accompanied us, that the said insurmountable difficulty (dicho imposibilidad) continued along the said line for a distance of five leagues, and in this the interested party agreed till coming, as in fact we came out at the fence, which he had set up on this front in the clear ground (en labors) at which place the surveyed aforesaid measured his cord, and making it fifty Castilian varas, set his compass, and observed that the said fence run from the north to south, and pursuing this course, we came at two hundred and twenty-five cordeles to the watering place where this survey commenced on the Rio

Grande de Norte, where it closed; and adding (uniting) the two hundred and twenty-five cordeles with the five leagues through the thicket and water, they make the quantity of six hundred (seven hundred) and twenty-five cordeles; and the said surveyor having already made a calculation for this purpose, of the bends and elbows which the said Rio Grande forms, belonging to the first line, he declared that in these last, and under the said four lines, were contained fifty-nine square leagues (sitios de ganado mayor) eleven and one-half caballerias, in favor of His Majesty, according to his acquaintance (skill) with this act of surveying, ratifying this by the oath which he has taken, all of which I set down in this official statement, before me and my assisting witnesses, the persons already mentioned being present; who signed on their respective accounts: and as to those who could not write, I, the said chief justice of the town of Camargo and judge commissioned for this business, have done so for them, acting as an examining tribunal, as has
477 been said, I certify.

JUAN ANTONIO DE ECHAVE.
MANUEL DE SIERRATTA.
SALVADOR DE LA GARZA.
JUAN JOSÉ DE LA GARZA FALCON.
BARTOLOMI TREVIÑO.
JOSÉ ANTONIO DE LA GARZA FALCON.

Assisting witness:

JOSÉ RAFAEL LÓPEZ.

Assisting witness:

JOSÉ BENITO LÓPEZ.

478 Field notes of survey for patent—64 leagues and five $\frac{647,875}{1,000,000}$ labors. Patent issued June 21st, 1859.

For eastern line, of Cavazos *v.* Treviño, 35 T. 133, A. D., 1871. Instituted in Brownsville, 9th April, 1852,—Same *v.* Same, 6,—Wall., 773, A. D. 1867.

In Cameron county, on the east bank of the Rio Grande, in front of the town of Matamoras, Mexico, and including the city of Brownsville, in the said county, by virtue of an act to relinquish the right of the State to certain lands therein named, passed February 10th, 1852, being confirmation No. 42, for the county of Cameron.

362. Beginning on the left bank of the Rio Grande 16 W. 100 vrs. S. 21 6′ E. from the S. E. corner of Mckinney and Williams' large survey on the Olmos creek, set post for S. W. corner of this survey, being the S. E. corner of a grant known as San Pedro de Carricitos, whence an ash marked X bears N. 59 W. 520 vrs. a willow marked

X bears N. 15 15′ E. 390 vrs. Thence down with the meanders of the left bank of the Rio Grande to lower or S. E. corner, set a stake in old bed of the Rio Grande, whence a willow marked X bears north 74 E. 75 varas; another marked X bears N. 73 E. 73 varas. Thence up with the meanders of the centre or middle of the old bed of the Rio Grande N. 73 15′ W. 980 varas, N. 84 30′ W. 320 varas S. 89 30′ W. 160 varas, N. 75 W. 100 varas, N. 52 W. 190 varas, N. 52 15′ W. 410 varas, N. 34 W. 420 varas, N. 25 45′ W. 316 varas, to intersection of E. boundary; N. 9 E. 75 varas, with said boundary to N. bank of lake or old river aforesaid, set a stake for S. E. corner, whence a mesquite marked X bears N. 80 E. 190 varas, a retama marked X bears N. 81 E. 190 varas. This corner stands 190 varas west of a slough or demarradero, which is believed to be the S. E. corner of this grant, as per title. Thence north 9 east with the east boundary of this survey at 1000 varas entered prairie, at 1627 varas passed a large ebony post, set by the authorities of the State of Tamaulipas in the survey of the grant known as the San Martin. Said post is situated 300 varas or 6 cordeladas east of the tanque, supposed to be the same called for by titles of the Espiritu Santo, as a point on this boundary 11,480 varas to a salt laguna S. E. 530 varas wide; 21,690 varas to another salt laguna S. E. 750 varas wide; 23,510 varas to a road leading from Brownsville to Point Isabel; at 32,656 varas passed a point 6,210 varas east from the Rancho San Juan de Retiro; 4,290 varas to a salt laguna known as Denemadero de los Bankitas, 2240 varas wide east and west; 47,657 varas to a
479 bolso or pocket of the laguna Madre; set a large ebony post for the N. E. corner of this survey in prairie, said post being marked XXX. Thence up with the meanders of Laguna Madre to the mouth of Arroyo Colorado. Thence up with the meanders of the right bank of said arroyo to the north-west corner of this grant, being the north-east corner of a grant known as Concepcion de Carricitos, set a stake, whence an ebony marked X bears S. 51 45′ W. 16 varas; another ebony marked X bears S. 5 W. 20 varas. Thence S. 9 W. with the west boundary of this survey, being the east line of the survey aforesaid, 11610 varas to a resaca 50 varas wide; north-east and south-west 28000 varas to another resaca 50 varas wide; 32740 varas to Resaca de los Ajuntes 90 varas wide, east and west; 33930 varas to La Puerta; at 36600 varas passed the Brownsville and Rio Grande City road; at 37620 varas passed the Rancho de San Vicente, 38140 varas to the beginning.

480 EXHIBIT C.

THE STATE OF TEXAS, }
County of Cameron. }

In District Court, 28th Judicial District of Texas, Spring Term, A. D. 1889.

MAY 6TH.

Be it remembered, that on this 6th day of May, A. D. 1889, at ten o'clock, a. m., there was begun and holden a regular term of the district court in and for the county of Cameron in the 28th judicial district of the State of Texas, at the court house in the city of Brownsville; said day being the first of the term, fixed by law for holding said term, to-wit: the first Monday in May, A. D. 1889.

Present: Louis Kowalski, clerk; S. A. Brito, sheriff.

The court was opened by proclamation of the sheriff, pursuant to law.

The Honorable John C. Russell, judge of this court, having failed to put in his appearance, the court was thereupon adjourned until to-morrow at ten o'clock, a. m.

TUESDAY, *May 7th, A. D.* 1889—10 o'clock a. m.

The court met.

Present: Louis Kowalski, clerk; by his deputy,—W. O. Reichel. S. A. Brito, sheriff, by his deputy, J. Dominguez.

The court was opened by proclamation of the sheriff, pursuant to adjournment.

The Honorable John C. Russell, judge of this court, having failed to put in his appearance, the court was thereupon adjourned until to-morrow at ten o'clock, a. m.

481 WEDNESDAY, *May 8th*, 1889—10 o'clock a. m.

The court met.

Present: Hon. John C. Russell, judge. D. McNeil Turner, district att'y. Louis Kowalski, clerk. S. A. Brito, sheriff.

The court was opened by proclamation of the sheriff, pursuant to adjournment.

The minutes of 6th and 7 inst., were read and approved, when the court proceeded to business as follows, to-wit:

* * * * * * *

MONDAY, *May the 27th, A. D.* 1889—9 o'clock a. m.

The court met.
Present: As before.
The court resumed business as follows, to-wit:

A. KENEDY, R. KING, ET ALS.
vs.
THOMAS CARSON, Administrator of Maria Josefa Cavazos, *et als.*
No. 1346. Partition of the Espiritu Santo Grant.

And now on this day, this cause came on to be heard in its regular order upon the docket, and thereupon came on to be heard the final report of the commissioners of partition herein filed in this cause on the twenty-eighth (28th) day of December, A. D., 1888, and supplemental thereto, and it appearing to the satisfaction of the court that said report is just, true and correct, and that said partition as therein set out is fair and impartial and in all things
482 in accordance with law and the orders and decrees of this court, and that the rights and ownership of the respective owners of said land is in all things correctly partitioned and set apart to them in said report, and there being no objection thereto, it is now therefore, in consideration of the premises, by the court now hereby ordered, adjudged and decreed that the said final report and supplement thereto of said commissioners in partition, be, and it now hereby is in all things approved and confirmed and made final.

* * * * * * *

Share No. 7.—And it is further ordered, considered and adjudged that the next succeeding portion or share of said land, being share number seven of said report of partition of said tract be, and it hereby now is assigned, allotted and set apart in severalty to Mrs. Annette P. Hicks, Mrs. Kate M. Combe, Mrs. Agnes A. Browne and Frances E. Powers (as one) as heirs of Stephen Powers, deceased, and to Mrs. Mary Ann Sprague (wife of Francis W. Latham) in one body, containing two thousand nine hundred and eighty-five (2985) acres in the proportion of two thousand and fifty-six (2056) acres of said share to the said Mary Ann Sprague Latham, and nine hundred and twenty-nine (929) acres *of* said heirs of Stephen Powers, deceased, bounded as follows, to-wit:—

Beginning at the south-west corner of this tract and north-west corner of Dana —, and running thence with the north line of said Dana survey, south eighty-two and one-half (82½) degrees east, one thousand two hundred and six (1206) varas to the south-east corner, a post eighty-nine (89) varas north of Juan Alvarez labor. Thence with west line of Miralles and Fernandez, north, seven and one-half (7½) degrees, at four hundred and eighty-five (485) varas left A. Ureste's field, at one thousand six hundred and fifty-five (1655) varas the lagoon due east of Marion ranch, at four thousand

and eighty-five (4,085) varas post F. D. east of Latham's crib, and at four thousand and ninety-two (4092) varas left Latham's fields at five thousand six hundred and ten (5610) varas left lagoon and entered timber at seven thousand six hundred (7600) varas lagoon and road to Rosillos, at ten thousand three hundred (10300) varas post and road from wells to Rosillos, at fourteen thousand eight hundred and forty-three (14843) varas a post on south bank of the Arroyo Colorado F. L. Thence
483 up the arroyo with its meanders south eighty-two and one-half (82½) degrees west one hundred and twenty-nine (129) varas, south sixty-nine and three-quarters (69¾) degrees west five hundred varas; south sixty-one and one-half (61½) degrees, west four hundred and fifty-three (453) varas; south sixty-seven and three quarters (67¾) west two hundred and twenty (220) varas north eighty (80) west two hundred and ten (210) varas north seventy-seven (77) degrees west two hundred and sixty (260) varas south fifty-two and one-quarter (52¼) degrees west, one hundred and thirty (130) varas south thirteen (13) degrees west one hundred and ninety (190) varas south thirty-eight (38) degrees east three hundred and ninety (390) varas south fifty one (51) degrees east two hundred and thirty (230) varas south twelve (12) degrees east three hundred and five (305) varas, south thirty-two and one-half (32½) degrees east two hundred and forty (240) varas south fifty-three and three-quarters (53¾) degrees east, two hundred and thirty (230) varas south thirty-four and three-quarters (34¾) degrees east two hundred and thirty-three (233) varas south three degrees east two hundred and forty (240) varas south twenty-three and one-half (23½) degrees, west three hundred and twenty-six (326) varas, south thirty-eight and one-half (38½) west three hundred and ten (310) varas south forty-three and one-half (43½), west four hundred (400) varas, south seventy and three-quarters (70¾) west one hundred (100) varas to a post at N. W. of Miss F. Tejerina tract, in a field of the Puertecitas ranch. Thence with line of said tract (88 W.) south eight degrees west, eleven thousand six hundred and twenty-seven (11627) varas to the place of beginning.

The said number seven is again subdivided into shares numbers eight and nine as follows:—

Share No. 8.—And it is further ordered, considered and adjudged that nine hundred and twenty-nine (929) acres of said share number seven (7) (said 929) nine hundred and twenty-nine acres known as share number eight (No. 8) following, being share No. (8) eight, of said report of partition of said tract be, and it hereby now is assigned, allotted and set apart in severalty to the said Annette P. Hicks, Kate M. Combe, Agnes A. Browne and Frances E. Powers as heirs of Stephen Powers, deceased, in one body, extending from the north line of the Dana land to the Arroyo Colorado, and between the surveys of Mary Ann Sprague Latham on the east, and Felipita Tijerina's on the west and bounded as follows, to-wit:—

484 Beginning at the south-west corner of this tract and north-west corner of survey for Mary Ann Sprague Latham, and running thence with north line of same, south eighty-two and one-half (82½) degrees east (1152) eleven hundred and fifty-two varas to the north-east corner of Sprague, a post on line of Fernandez and Miralles, from which a mesquite marked L bears south seventy-three (73) degrees west (9) nine varas and a mesquite marked L bears north forty-eight and one-half (48½) degrees east (5) five varas; thence with Miralles and Fernandez north seven and one-half (7½) degrees east (5226) five thousand two hundred and twenty-six varas to bank of the Arroyo Colorado, a post marked —; thence up the arroyo meanders north eighty-two and one-half (82½) degrees west, (129) one hundred and twenty-nine varas south sixty-nine and three-quarters (69¾) degrees west, (500) five hundred varas, south sixty-one and one-half (61½) degrees W. (453) four hundred and fifty-three varas, south sixty-seven and three quarters (67¾) degrees west, (220) two hundred and twenty varas north eighty (80) degrees, west (210) two hundred and ten varas, north seventy-seven (77) degrees west (260) two hundred and sixty varas south fifty-two and one-quarter (52¼) degrees west, (130) one hundred and thirty varas, south thirteen (13) degrees west (190) one hundred and ninety varas, south thirty-eight (38) degrees east (390) three hundred and ninety varas, south, fifty-one (51) degrees east, (200) varas, south twelve (12) degrees east (305) three hundred and five varas, south thirty-two and one-half (32½) degrees east (240) two hundred and forty varas south fifty-three and three-quarters (53¾) degrees east, (230) two hundred and thirty varas, south thirty-four and three-quarters (34¾) degrees east (233) two hundred and thirty-three varas, south (3) three degrees east (240) two hundred and forty varas south twenty-three and one-half (23½) degrees west (326) three hundred and twenty-six varas, south thirty-eight and one-half (38½) degrees west (310) three hundred and ten varas south forty-three and one-half (43½) degrees west, (400) four hundred varas south seventy (70) degrees west, (96) ninety-six varas, to the north-west corner of this survey and north-east corner of F. Tejerina a post from which a m'k'd mesquite bears northwest and one southeast; thence with east line of Tejerina survey, south eight (8) degrees and west (2003) two thousand and three varas, to the place of beginning.

485 To have and to hold the above described share or portion of said land, with all of its appurtenances whatsoever in severalty unto them, the said Mrs. Annette P. Hicks, Mrs. Kate M. Combe, Mrs. Agnes A. Browne and Frances E. Powers (as one) as heirs of Stephen Powers, deceased, in fee simple, and to their heirs and assigns forever.

* * * * * * *

Share No. 19.—And it is further ordered, considered and adjudged that the next succeeding share or portion of said land being share number nineteen (19) of said report of partition of said tract be and

the it now hereby is allotted, assigned and set apart in severalty in one body to Mrs. Annette P. Hicks, Mrs. Kate M. Combe, Mrs. Agnes A. Browne and Frances E. Powers (as one) as heirs of Stephen Powers, deceased, and to Mrs. Marie Grogan Dana (wife of C. S. Dana) as heir of James Grogan, deceased, in the proportion of twenty-eight thousand six hundred and two (28602) acres of said share to said Powers heirs, as one, and seventeen thousand five hundred and one (17501) acres to said Mrs. Marie Grogan Dana, the said whole share embracing the ten leagues, or say, forty-four thousand two hundred and eighty (44280) acres known as the "Paredes lands," owned in the proportion of five-eighths ($\frac{5}{8}$) to the said Powers heirs (as one) and three-eighths ($\frac{3}{8}$) to the said Mrs. Marie Grogan Dana; and also nine hundred and twenty-seven (927) acres of land owned by the said Powers heirs alone and eight hundred and ninety-six (896) acres owned by the said Mrs. Dana alone. The said whole share embracing forty-six thousand one hundred and three (46103) acres of land, being the lower part of the middle one-third of the said "Espiritu Santo" tract, and extends from the Rio Grande river on the south to the Arroyo Colorado on the north, not to embrace, however, within its limits any part of the Fort Brown military reservation as is hereinafter in this decree more particularly provided for, said whole share bounded as follows:

Beginning at post in the said Fort Brown reservation, nearly opposite and a little below the lower line of the Matamoros fortifications, being the S. E. corner of the west division above made for Carazos, *et als.*, and the south-west corner of this survey, and running; thence down the Rio Grande with its meanders, north, fifty-six and one-half ($56\frac{1}{2}$) degrees east (240) two hundred and forty varas, north, fifteen and one quarter ($15\frac{1}{4}$) degrees east one thousand two hundred and fifty-three (1253)
486 varas, north thirty-three and one-half ($33\frac{1}{2}$) degrees east, five hundred and thirty (530) varas, south sixty-seven (67) degrees east nine hundred and seventy-four (974) varas, south twenty-eight and one-half ($28\frac{1}{2}$) degrees east, three hundred and seventy-two (372) varas, south forty-two and one-half ($42\frac{1}{2}$) degrees west one thousand two hundred and forty-five (1245) varas, south four and one-half ($4\frac{1}{2}$) degrees west, two hundred and seventy (270) varas, south seventy-seven and three-quarters ($77\frac{3}{4}$) degrees east one hundred and forty (140) varas, north fifty-seven (57) degrees east one thousand three hundred (1300) varas north, twenty-four (24) degrees east, five hundred and sixty (560) varas north fifteen (15) degrees west, five hundred and ninety-four (594) varas, north seven and
4† seventee- 417†
one-half ($7\frac{1}{2}$) [degrees]* east [two]* hundred and *forty* [(240)]* varas
twenty-eight (28)† two hun. & fo. (240)†
north [sixty-seven (67)]* degrees east, one hundred (100) varas,
north 67° E. 100 vs. †
A south seventy-three and one-quarter ($73\frac{1}{4}$) degrees, east six hundred

[* Words and figures enclosed in brackets erased in copy.]
[† In pencil in copy.]

and thirty (630) varas south eighteen and one-quarter (18¼) degrees east, five hundred and eighty-five (585) varas south, seventy (70) degrees west, three hundred and forty-three (343) varas south twenty-seven and one-quarter (27¼) degrees west one thousand and forty (1040) varas, south eleven (11) degrees, west four hundred and seventy-seven (477) varas, south twenty-four (24) degrees west, six hundred and ninety-five (695) varas south two and one-half (2½) degrees west six hundred and twenty (620) varas south, thirty-three (33) degrees east five hundred and fifty (550) varas south eighty-three (83) degrees east five hundred and eighty (580) varas north sixteen and one-half (16½) degrees, east three hundred and forty-five (345) varas, north thirty-six (36) west eight hundred (800) varas, north (650) six hundred and fifty varas, north eleven (11) degrees west, one hundred and fourteen (114) varas, south seventy-eight (78) degrees east one thousand one hundred and forty-eight (1148) varas, north eleven (11) degrees east, one hundred and seventy (170) varas, north thirty-four (34) degrees west, seven hundred and thirty (730) varas, north thirty-nine and one-half (39½) degrees east, three hundred and four (304) varas, north seventy-five (75) east, two hundred and twenty three (223) varas, south sixty-one and one-half (61½) degrees east, three hundred and twelve (312) varas, south thirty-six and one-quarter (36¼) degrees east ninety-four (94) varas to a palo blanco marked
487 six chops (=) on the north bank of the river, from which another palo blanco bears north thirty-six and one-quarter (36¼) degrees west ninety-four (94) varas for the south-east corner of this survey, and south-west corner of the next survey below in this divisions. Thence for lower or eastern line of this survey north four and one-half (4½) degrees, east at one hundred and thirty-two (132) varas passed east corner of large jacal in the Fresno ranch, two thousand six hundred (2600) varas post main road at two thousand eight hundred (2800) varas a post south side of resaca, three thousand five hundred and eight (3508) varas same resaca a palo blanco west at (4620) four thousand six hundred and twenty varas same resaca, at (5410) five thousand four hundred and ten varas road to Brazos, at (6186) six thousand one hundred and eighty-six varas Rio Grande Railroad track at (9800) nine thousand eight hundred varas post north side of Jack Ass prairie, at (11560) eleven thousand five hundred and sixty varas passed resaca del Rancho Viejo at (13040) thirteen thousand and forty varas a post entered palo blanco prairie at (14600) fourteen thousand six hundred varas road Tanque to Point Isabel, at (16300) sixteen thousand three hundred varas a post in pital, at (19120) nineteen thousand one hundred and twenty varas a post, at (22000) twenty-two thousand varas a post, at (25000) twenty-five thousand varas a post, entered timber at (26381) twenty-six thousand three hundred and eighty-one varas a road east to San Antonito ranch, at (27876) twenty-seven thousand eight hundred and seventy-six varas a road northwest to Salados ranch, at (29890) twenty-nine thousand eight hundred and ninety varas bank of resaca de los Cuates, at (33270)

thirty-three thousand two hundred and seventy varas post entered prairie, at (34482) thirty-four thousand four hundred and eighty-two varas a wired fence and passed pond, at (36630) thirty-six thousand six hundred and thirty varas a resaca, at (37344) thirty-seven thousand three hundred and forty-four varas the Elizondeño ranch bears north fifty and one-half (50½) degrees west (220) two hundred and twenty varas, at (38290) thirty-eight thousand two hundred and ninety varas road north-west to Tina, at (41030) forty-one thousand and thirty varas a post road to Ormigas ranch, at forty-two thousand eight hundred and sixty varas a post road from Ormigas to Cibolo, at (46400) forty-six thousand four hundred varas a post at main road to Taremas ford, at (46820) forty-six thousand eight hundred and twenty varas entered prairie,
488 at (48900) forty-eight thousand nine hundred varas a post and Miradores ranch bears north seventy (70) degrees, west about three-quarters (¾) of a mile, at (51500) fifty-one thousand five hundred varas to a post marked M / A, at (55130) fifty-five thousand one hundred and thirty varas a post marked A, at (57970) fifty-seven thousand nine hundred and seventy varas a post marked M, at (60600) sixty thousand six hundred varas a salt lagoon, at (61540) sixty-one thousand five hundred and forty varas the east end of a tule pond, at (62553) sixty-two thousand five hundred and fifty-three varas a post mkd. A among pitas, at a road, at (63561) sixty-three thousand five hundred and sixty-one varas a post, at (63670) sixty-three thousand six hundred and s-venty varas a post marked A on the south bank of the Arroyo Colorado north-east corner of this survey; thence up the Arroyo Colorado with its meanders, south forty-seven and one-half (47½) degrees west, (1100) one thousand one hundred varas, south eighty-three and one-half (83½) degrees west, (1000) one thousand varas, south twenty-eight and one-half (28½) degrees west, (460) four hundred and sixty varas, south two and one-quarter (2¼) degrees west, (900) nine hundred varas, south, fifteen degrees west (2356) two thousand three hundred and fifty-six varas, south forty and three-quarters (40¾) degrees, west, (2138) twenty-one hundred and thirty-eight varas, north, seventy-eight and one-half (78½) degrees west (290) varas, north eighty-six (86) degrees west, (352) three hundred and fifty-two varas to a post for the north-west corner of this survey and the north-east corner of the next survey above in this division made for Carazos, *et als.* Thence with line of said adjoining survey south five (5) degrees west (58069) fifty-eight thousand and sixty-nine varas, to the place of beginning.

To have and to hold the above described share or portion of said land, with all of its appurtenances whatsoever in severalty unto them, the said Mrs. Annette P. Hicks, Mrs. Kate M. Combe, Mrs. Agnes A. Browne and Miss Frances E. Powers as heirs of the said Stephen Powers, deceased, and Mrs. Marie Grogan Dana as heir of James Grogan, deceased, in fee simple, and to their heirs and assigns forever.

* * * * * * *

489 And it is further considered, ordered and adjudged that this judgment and decree do forever stand for and serve in all things as a conveyance and title in severalty to each of the said respective parties hereto of the several and respective shares and portions of the said premises, hereinbefore adjudged to them respectively, as against the other parties hereto, their heirs, executors, administrators and assigns, as fully and effectually in the law as the deed of said parties could vest the same.

And it is further considered and decreed and expressly provided that nothing in this decree shall be construed as in any way affecting the Government or Fort Brown reservation adjoining the city of Brownsville, containing three hundred and forty-eight and one-half acres, occupied by the United States as a military post, the title to which has been vested to Thomas Carson, administrator of Maria Josefa Car-zos, and in James Stillman by decree of the circuit court of the United States for the western district of Texas, at Brownsville, rendered on the 24th day of July, A. D. 1887, in cause No. 248, on the docket of said court, entitled Heirs of Miguel Salinas *vs.* W. L. Kellogg, *et al.*, which said decree is hereby recognized and acquiesced in. Nor shall any line or the lines of the survey itself, which has been made under the orders of this court in this cause, be taken or considered as of any force or effect so far as they may have any bearing upon the said res-rvation, or of the rights of the joint owners thereto, nor shall they be of any legal, moral or persuasive force so far as said reservation is -cerned. No part of the record of this cause, whether pleadings, surveys, testimony, orders, judgments or decrees, shall be used as evidence at any time for or against the said joint owners in ascertaining and determining their respective portions of said reservation. In other words, as the said Fort Brown reservation has been set apart by metes and bounds, and segregated from the Espiritu Santo grant or survey, by the decree of the said circuit court of the United States aforesaid, it is considered and so adjudged that the said reservation has been taken from the jurisdiction of this court in this cause, and this court now disclaims all jurisdiction over the said reservation in this cause, and decrees that nothing in this judgment, nor in any former judgments, orders, surveys, or other proceedings in this suit shall in the slightest

490 decree affect the said reservation or the rights of the joint owners therein, or if the joint owners should at any time find it necessary to resort to proceedings, whether judicial, by arbitration or otherwise, for the purpose of ascertaining their respective portions of, or interests in the said reservation, they shall be in no wise bound or affected by the surveys or adjudications in this cause, but may have new surveys made, or take any other course they may choose to adopt as fully and completely to all intents and purposes, as though this suit had never been instituted, or any surveys made or proceedings had herein.

And it is further expressly ordered, considered and adjudged that the line of the Paredes ten leagues shall and does stop at the outer

line of said military reservation of Fort Brown, and does not and shall not at all enter into, pass through or include any part of said reservation, and that field notes of said Paredes' land as hereinbefore set out shall be and are of no force or effect so far as any part of said military reservation is concerned.

And it is further considered, adjudged and decreed, that the said Alexander Werbiskie, one of the plaintiffs herein, pay to Mrs. Marie Grogan Dana, the sum of two hundred and fifty dollars, ($250.00) in United States currency, and to Mrs. Annette P. Hicks, the sum of sixty-two dollars and fifty cents, ($62.50), and to Mrs. Agnes A. Browne, the sum of sixty-two dollars and fifty cents, ($62.5–), and to Miss Frances E. Powers, the sum of sixty-two dollars and fifty cents, ($62.50), and Dr. Charles B. Combe, executor of Kate M. Combe, deceased, the sum of sixty-two dollars and fifty cents, ($62.50), all in United States currency for each and all of which sums let execution issue in due course of law; the said sums adjudged against and found due from said Werbiskie to said parties respectively by and in note three (3), shares Nos. eight, (8) ten (10), twelve, (12) and fourteen, (14), of the said report of partition herein in payment by said Werbiskie to said parties for four hundred acres of land unavoidably set apart to said Werbiskie in his share No. ten, (10) twenty-one (21) in excess, and in his share No. twelve, (12), three hundred and seventy-nine (379) acres in excess, which said four hundred acres of land belonged to and should have been included in the shares of Mrs. Dana, and of the heirs of Stephen Powers, deceased, to-wit: said Annette P. Hicks, Kate M. Combe, Agnes A. Browne and Frances E. Powers, and the said
491 amounts of money respectively are therefore to be paid by said Werbiskie as compensation for and in lieu thereof.

And it is further considered and adjudged that all the costs of court in this cause and all costs of the partition herein as shown by the report of partition and supplement thereto in this cause aggregating the sum of twelve thousand five hundred and fifty-four dollars and four cents, ($12,554.04) in United States currency shall be paid as follows:

Eighth. Mrs. Annette P. Hicks, Mrs. Agnes A. Browne, Miss Frances E. Powers and Mrs. Kate M. Combe (by Charles B. Combe, her executor) shall pay the sum of one thousand one hundred and ninety-five dollars and fourteen cents, ($1195.14).

* * * * * * *

And it is further ordered, adjudged and decreed that the said respective amounts herein adjudged against the respective parties, shall be a special lien and charge upon the land of each and every one of the respective shares to which it belongs until paid.

* * * * * * *

No further business appearing, the court now took a recess until tomorrow morning, at 10 o'clock, a. m.

* * * * * * *

492 THE STATE OF TEXAS, }
County of Cameron. }

I, Louis Kowalski, clerk of the district court Cameron county, Texas, do hereby certify, that the above and foregoing is a full, true and correct copy of shares 7, 8 and 12, apportioned off to the heirs of Stephen Powers, deceased, as per decree of partition of the "Espiritu Santo" grant, in the district court of Cameron county, Texas, in cause No. 1346, wherein M. Kenedy, R. King, *et als.*, are plaintiffs, and Thomas Carson, administrator of Maria Josefa Cavazos, *et als.*, the defendants, rendered on the 27th day of May, A. D., 1889, the same being a regular day of this term of court as the same appears of record in Book F, pages 379/424.

To certify which, witness my hand, and official seal, at office, in the city of Brownsville, Texas, this 4th day of October, A. D., 1898.

[SEAL.] LOUIS KOWALSKI,
Clerk District Court, Cameron County, Texas.

493 EXHIBIT D.

Memorandum of agreement between Hon. Pedro G. Cavazos and James Stillman, made this 7th day of August, 1885, between Pedro G. Cavazos, of Matamoras, Mexico, acting for himself and the estate of Maria Josefa Cavazos, deceased, and James Stillman, of the city, county, and State of New York, acting for himself and the estate of Charles Stillman, deceased.

Whereas, on or about the 25th day of March, 1875, Maria Josefa Cavazos, by deed of that date and in accordance with the original contract of October 12, 1850, between Dr. Raphael Garcia Cavazos and Maria Josefa Cavazos of the one part, and Bassa and Hord of the other part, conveyed to Charles Stillman the one-half part of the tract of land known as the "Fort Brown reservation" at or near Brownsville, Texas, the said Charles Stillman to sustain the one-half part of all costs of prosecuting in courts the claims of said Maria Josefa Cavazos for compensation against the United States Government and likewise the one-half of the costs to be incurred after the date of said deed in prosecuting in all courts the title of said Maria Josefa Cavazos to the lands in Cameron county, Texas, the part of the Espiritu Santo grant owned by her under the last will of Dona. Francisca (not including, however, the tract of land conveyed by the said Bassa and Hord in 1854 known as the site of Brownsville.)

And, whereas, the parties hereto claim to be owners in equal proportions of said Fort Brown reservation and to be entitled to receive in equal proportions the appropriations of $160,000 lately therefore

by the Congress of the United States of America, subject, however, to the adjustment of accounts as hereinafter mentioned.

And, whereas, the said Stillman on his own behalf, and in behalf of said estate of Charles Stillman, deceased, claims to be a creditor of the estate of Maria Josefa Cavazos and of said Pedro G. Cavazos.

And whereas, the said Pedro G. Cavazos claims that he has from time to time made payments and disbursements for and on account of the property mentioned in said deed hereinabove recited and should be credited therewith:

And, whereas, it is the desire of both the parties hereto that all matters of account in this matter in dispute between them be
494 satisfactorily settled and adjusted as soon as may be, and especially that said appropriation of $160,000 be *demeneded* and received from the United States of America without delay.

Now, therefore, the said Pedro G. Cavazos, acting for himself and the estate of Maria Josefa Cavazos, deceased, and the said James Stillman, acting for himself and the estate of Charles Stillman, deceased, do hereby mutually covenant and agree to and with each other as follows:—

1. That they shall and will forthwith severally execute and acknowledge in due form of law, a deed of conveyance of the so-called Fort Brown reservation to the United States of America and shall deliver such deed to Paulina Echeverria of New York city, to be by him held in trust until such time as the United States of America shall be prepared to pay over the said sum of one hundred and sixty thousand dollars ($160,000).

II. The said sum of one hundred and sixty thousand dollars, ($160,000), when received by said Paulina Echeverria as aforesaid shall be divided and disposed of as follows:—

(1.) Sixteen thousand dollars, ($16,000) thereof shall be forthwith paid or allowed to William Brady, Esq., in full payment of his fees or compensation in obtaining such appropriation from the Congress of the United States of America.

2. Fifty thousand dollars, ($50,000) thereof shall be paid forthwith to Pedro G. Cavazos for his account and the account of the estate of Maria Josefa Cavazos, deceased, which he claims to be duly authorized to represent, and he thereby covenants that he will procure a proper acknowledgment of the receipt of such moneys, duly executed by the parties of the first part.

3. Fifty thousand dollars ($50,000) thereof shall be paid forthwith to James Stillman for his account and the account of the estate of Charles Stillman, deceased, which he claims to be duly authorized to represent, and he hereby covenants that he will procure a proper acknowledgment of such moneys, duly executed therefor by the parties of the second part.

4. The balance thereof, consisting of forty-four thousand dollars, ($44,000), shall be forthwith deposited by the said Paulina Echeverria in the Central Trust Company of New York as a special deposit, the same to abide the event of the settlement of all and

singular the mutual accounts in dispute between the said Stillman and the said estate of Charles Stillman, deceased, *one* of the
495 one part, and the said Pedro G. Cavazos and the estate of the Maria Josefa Cavazos, deceased, on the other part.

III. Said Pedro G. Cavazos and James Stillman, *respectfully* agree to forthwith execute and deposit with the said Paulino Echeverria, a revocation of power of attorney to be held by said William Brady, and they hereby *respectfully* authorize and direct the said Paulino Echeverria to deliver the same to the officials of the United States of America, who may be charged with the duty of payment of the appropriation above mentioned in case such officials shall demand such revocation as a condition precedent to making such payment.

4. Said Stillman hereby agrees to furnish and submit the said Pedro G. Cavazos, or his attorneys, Barney and Cowman, within four months from the day of the receipt by him from the Government of the said appropriation above mentioned and in any event within one year from the date of the execution of this agreement, full and detailed statements of all and singular the items of accounts claimed by the said Stillman to exist in his favor, or in favor of the said estate of Charles Stillman, deceased, against the said Pedro G. Cavazos, or the said estate of Maria Josefa Cavazos, deceased, and also full and detailed statements of all proceedings taken or actions defended by him or said Charles Stillman, or the said estate of Charles Stillman, deceased, relative to the title of the lands mentioned in the deed first hereinabove recited, the present *statutes* of such proceedings or actions; and in case any such proceedings or actions shall have been discontinued or the prosecution or defense thereof abandoned before final judgment therein the court of last resort, the reason and grounds for such discontinuance or abandonment of such prosecution or defense.

5. Said Pedro G. Cavazos shall within four months from the day of the receipt by him from the Government of the said appropriation above mentioned and in any event within one year from the date of the execution of this agreement, furnish and submit to said Stillman, or his attorneys, Shearman and Sterling, full and detailed statements of all and singular, the payments and disbursements claimed by the said Cavazos to have been made by him, or the said estate of Maria Josefa Cavazos, deceased, or by the said Maria Josefa Cavazos in her lifetime relative to litigations concerning the
496 title of the property and lands mentioned in the said deed. And of any and all sums of money claimed by him to have been paid to said Stillman or for his account.

6. Each party, within ninety days after the receipts of the accounts, and statements from the other party as above provided, shall state his objections in writing to such accounts and statements and deliver the same to the opposite party or his attorneys.

7. The time for submitting such accounts, statements and objections, *respectfully*, may be extended by the referee hereinafter mentioned by the consent of the parties hereto or their respective attor-

neys and the said attorneys are hereby given power to consent, if in their judgment they think it expedient and just to do so.

8. Within three hundred and sixty days after the signing of this document, the said Paulino Echeverria, Hiram Barney and John W. Sterling, or a majority of them, acting either together or severally, shall in writing subscribed by them, nominate and appoint a referee to determine all questions of accounts arising under this agreement, which referee shall be a counsellor at law of the supreme court of the State of New York.

9. In case the said Barney and Cowman, or either of them, attorneys of the said Pedro G. Cavazos and the estate of Maria Josefa Cavazos think it expedient to do so, the said attorneys or either of them may admit due service of a summons in any action brought by the said James Stillman against the said Pedro G. Cavazos and the estate of the said Charles Stillman, or either of them, and the estate of Maria Josefa Cavazos, or either of them as defendants, in any court of the State of New York, and appear for the said defendants therein, with the same force and effect as if the said Cavazos and the representatives of the estate of said Maria Josefa Cavazos had been personally served with the summons within this State; and in case the parties hereto shall fail to make a final settlement and adjustment of the said accounts, within sixty days after service of the objections thereto as hereinabove provided, the said Barney and Cowman, or either of them, are hereby authorized and required by the said defendants to accept the service of such summons and to appear for them, in such actions; and, in such action, it is especially agreed that all matters of account in dispute between the said parties hereto shall be litigated and settled; and all the issues in such action
497 shall be referred to the referee appointed as hereinbefore provided; and said referee shall forthwith proceed to examine such accounts to hear and determine all proper evidence relating thereto and to settle such accounts according to the rules and practice of the supreme court of the State of New York; and all the fees of such referee, and the costs and disbursements of such action shall be paid out of the said fund, before a final distribution thereof; and judgment shall be entered in such action, making a final distribution of such funds which thereupon be paid by the said Paulino Echeverria, as trustee, in accordance with such judgment.

10. In case said referee shall find and determine that there is anything due from the said James Stillman, or the estate of Charles Stillman, deceased, the said referee shall (upon due proof thereof adduced before him find and adjudge what, if anything, is the amount due to said Pedro G. Cavazos, and the estate of Maria Josefa Cavazos, and the amount so found due shall be credited to said Pedro G. Cavazos, and the estate of Maria Josefa Cavazos, deceased.

11. Upon the final settlement and adjustment of such matters of account, the said referee shall, out of said fund so deposited, as aforesaid, first order the payment of the expenses, if any, of such accounting, and shall then pay to said Stillman, for his account and

the account of the estate of Charles Stillman, deceased, such amount, if any, as shall be found due to him or said estate, upon such settlement, upon the terms and conditions hereinafter mentioned; and the balance, if any, shall be paid to said Pedro G. Cavazos for his account and the account of the estate of Maria Josefa Cavazos, deceased, so represented by him, each party to give to said Paulino Echeverria as trustee, proper receipts for such payments in the manner provided for in subdivisions 2 and 3, of article 2, of this agreement: It being the intention of the parties hereto that in case neither party shall be found indebted to the other, *both parties share in the said fund equally*, after the payment of the expenses herein provided, and that any excess of indebtedness of the one to the other shall be deducted from the moiety of the one so indebted and not from the entire fund before division thereof.

12. In case the fund so deposited (after payment of the expenses of such accounting, if any) shall be sufficient to pay in full the amount so found to be due to said James Stillman and the
498 estate of said Charles Stillman, deceased, as established by such accounting, then the said Stillman shall upon and as a condition of payment thereof, assign, transfer and set over unto the said Cavazos the tax title or other titles that said James Stillman claims to hold or control upon or over the premises hereinbefore mentioned, or some part thereof (the validity of which tax title as against him being disputed, however, by said Cavazos,) excepting therefrom, however, *much* thereof contained as is included in the so-called Fort Brown reservation to be conveyed to the United States Government as aforesaid, and that the time of the transfer of the said tax and other titles, either under the provisions of this or any subsequent articles of this agreement, each of the parties hereto acquittance *if* full of all claims and demands which each of the said parties as or claims to have against each of the other parties hereto.

13. In case such fund be sufficient to pay in full the amount so found to be due as aforesaid, then said Stillman shall be entitled to receive all of such funds (after payment of expenses as aforesaid), upon delivery to said Pedro G. Cavazos and agreement reciting the receipt of said balance of said fund on account of said claim, and covenanting and agreeing that he will, upon the payment to him within seventy-five days after the date of the delivery thereof, to Barney and Cowman, attorneys for said Cavazos of the balance remaining due on such account, assign, transfer and set over to said Cavazos the tax title or other titles mentioned in the proceeding article hereof.

14. In case upon the final settlement and adjustment of said accounts as above provided, it shall appear that there is nothing due to said Stillman, he shall forthwith assign, transfer and set over to said Pedro G. Cavazos, the tax title or other titles mentioned in article 12 hereof, and in case he be found a debtor to said Cavazos upon such settlement, he shall, in addition to the delivery of such tax titles or other titles, *to* pay to said Cavazos the said amount so found due him on such accountings.

15. Nothing herein contained, and no action or proceedings taken hereunder and no deed, act or payment done or made in pursuance of this agreement, shall in any way *relieve, discharge or exonerate* said James Stillman, or the estate of Charles Stillman, deceased, *from the obligations assumed*, by the said Charles Stillman under the deed first hereinbefore recited, so far as the same are binding and obligatory upon him and said estate at the time of the execution hereof.

499 16. It is hereby mutually understood and agreed, that this agreement is made upon this express understanding that, pending the said accounting, as hereinbefore provided, and until the final and complete performance on the part of each of the parties hereto of the several covenants and agreement hereinabove entered into by each of the — respectively, no proceedings, either at law or in equity, except as hereinabove expressly allowed, shall be instituted by one against the other for or by reason of the matters or things embraced within the scope of this agreement; and in case any such proceedings be so instituted, the proceedings hereinabove provided for it is expressly stipulated, may be pleaded as an absolute bar therein.

17. Each of the parties hereto hereby further covenant- and agree- that he will at any time hereafter, upon the reaso-able request of the other and at the proper cost and charges in law — the other party, his heirs and assigns, make and execute, or cause to be made and executed, all and other such further acts, conveyances and assurances in the law for the better and more effectually carrying out all the terms and conditions of the agreement as by the said party, his heirs and assigns, or his or their counsel, learned in the law, shall be advised or required.

18. The said Pedro G. Cavazos and James Stillman hereby and mutually covenant with each other, the said Cavazos on behalf of the estate of Maria Josefa Cavazos, and the said Stillman on behalf of the estate of Charles Stillman, deceased, that they are and each of them severally is duly authorized and empowered to enter into this agreement, as representing such estates respectively.

19. In case any other or further appropriation shall be made by the Congress of the United States of America for said Fort Brown reservation within mentioned, the parties hereto shall share the same equally between them, after deducting the expenses connected with the obtaining the same which shall have been authorized by both of the parties hereto.

In witness whereof, the parties hereto have hereunto set their hands and seals this day and year first above written.

(Signed) PEDRO G. CAVAZOS.
ESTATE OF MARIA JOSEFA CAVAZOS,
By PEDRO G. CAVAZOS.
JAS. STILLMAN.
ESTATE OF CHARLES STILLMAN,
By JAS. STILLMAN.

In presence of—
(Signed) JOHN W. STERLING.

500 In subdivision 1, paragraph number 2, words "in full payment" and that at the end of paragraph 11, words "it being the intention of the parties hereto that in case neither party shall be indebted to the other party, both parties shall share in the said fund equally, after the payment of expenses herein provided and that an excess of indebtedness of the one to the other shall be deducted from the moiety of the one so indebted, and not from the entire fund before a division thereof, and at the end of xlx clause two lines and one-half written in all before executed.

(Signed) E. D. COWMAN.

501 Paulino Echeverria, named as trustee in the within agreement, declined to act. It is now by the mutual act of the parties thereto affixed, declared and determined that Hector de Castro, of the city of New York, shall be and is hereby appointed trustee in the place and stead of said Paulino Echeverria, with the same powers and *chared* with the same duties and obligations as if he had originally been made as trustee in said agreement, and that said Hector de Castro shall be entitled to deduct and receive to his own use from the moneys coming into his hands as such trustee, the sum of four hundred dollars in full for his compensation as trustee.

PEDRO G. CAVAZOS.
ESTATE OF MARIA JOSEFA CAVAZOS,
By PEDRO G. CAVAZOS.
(Signed) JAMES STILLMAN.
ESTATE OF CHARLES STILLMAN,
By JAS. STILLMAN.

In presence of:—

(Signed) CHAS. F. HALSTEAD.

502 NEW YORK, *Aug.* —, 1885.

I, Paulino Echeverria, of the city of New York, hereby acknowledge the receipt from Senor Pedro G. Cavazos and Mr. James Stillman of two deeds of the Fort Brown reservation, one dated 20th April, 1885, the other dated 7th August, 1885, each executed by said Pedro G. Cavazos and James Stillman to the United States of America, pursuant to paragraph 1, of the within agreement, and also the revocation of the power of attorney mentioned in paragraph 111 of said agreement, and to hereby accept the trust conferred upon me by said agreement, I hereby promise and agree faithfully to execute the same in the manner therein prescribed.

—— ——.

Witnesses:

—— ——.

NEW YORK, *September* —, 1885.

I, Hector de Castro, of the city of New York, hereby acknowledge the receipt from Senor Pedro G. Cavazos and Mr. James Stillman of two deeds of the "Fort Brown reservation." One dated the 20th of April, 1885, and the other dated the 7th of August, 1885, each executed by Pedro G. Cavazos and James Stillman to the United States of America, pursuant to paragraph 1, of the within agreement, and also the revocation of the power of attorney mentioned in paragraph 3, of said agreement and hereby promise and agree faithfully to execute the same in the manner therein prescribed and for the fees and compensation above mentioned.

(Signed) HECTOR DE CASTRO.

In the presence of:
(Signed) C. BACARISSE.

GALVESTON, TEXAS, *December 2nd*, 1897.

I, E. L. Reading, a notary public in — for Galveston county, Texas, hereby certify that the above and foregoing pages are a correct copy of the certified copy, dated, Galveston, Texas, Nov. 5th, 1897, of the original agreement between Pedro G. Cavazos, of Matamoras,
503 Mexico, (now deceased) and James Stillman of New York, as the owners of the Fort Brown reservation in Texas, dated 7th day of August, 1885.

—— ——.

(Endorsed:) Eq. 21. C. B. Combe, ex'r. *et al.*, *v.* James Stillman, *et al.* 2nd. amended bill. No. 109. U. S. cir. crt. west. dist. Tex. Browns. division. No. 21. In equity. C. B. Combe, ex'r. *et al. v.* Jas. Stillman, *et al.* 2nd. amended bill. Filed at San Antonio, Texas, May 1, 1899. D. H. Hart, clerk. C. L. Bates. W. N. Parks. (109).

504 *Separate Demurrer of James Stillman to Second Amended Bill of C. B. Combe, Executor.*

U. S. Circuit Court, Western District of Texas, at Brownsville.

C. B. COMBE, EX., ET AL.
vs.
JAMES STILLMAN ET ALS. } No. 21. In Equity.

The separate demurrer of James Stillman, one of the defendants in this cause, to the second amended bill of C. B. Combe, executor, *et als.*

This defendant, by protestation, especially reserving the point hereinbefore made by him that this court has no jurisdiction over him in this cause, or over this cause, and not confessing any or all

the matters and things in the complainants' said second amended bill of complaint contained, to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth; that the said second amended bill doth not contain any matter of equity whereon this court can ground any decree or give to the complainants any relief against this defendant; and that complainants have not in and by said amended bill made or stated such a cause as entitle them in a court of equity to any discovery from this defendant as to the matters contained in the said amended bill, or any of such matters.

And for other and special cause of demurrer to said second amended bill, this defendant showeth:

1. That all the matters and things set forth in section four of complainants' amended bill, except the averments relative to one-half interest in the Salinas claim, and the averments relative to the rents and revenues of that and of the Fort Brown property since 1846, are either mere repetitions of the statements already set forth in the original and amended bill herein, or negative averments of the matters contained in this defendant's answer thereto, and contain no new matter, and are therefore unnecessary and improper to be set up in an amended bill because they do not amount in
505 substance to a special replication.

2. That the averments in section 4 of said amended bill relative to the alleged ownership by the Powers estate of one-half of twenty-two and one-half acres claimed under Miguel Salinas, are so vague and indefinite and so defective in detail and fail so utterly to deraign the alleged title from Salinas to Powers and from Salinas to Francisco Cavazos, the conceded title holder in 1833, that this defendant cannot safely plead thereto and cannot be held to plead thereto.

3. That the said amended bill does not state any facts or make any allegations whatever on which to base a claim for the rents and revenues of any portion of the Paredes tract or of any portion of the Salinas claim, prior to the time when Stephen Powers became the alleged owner thereof, and the said bill does not show any right, title or interest in and to the rents and revenues of said two properties during the time when the alleged title to the same was in the alleged grantors of Stephen Powers.

4. That all the matters and things set up in said amended bill relative to the partition proceeding No. 1346 of the docket of Cameron county not only show that said proceeding does not bind this defendant in this cause, but also show that they are irrelevant to any issue herein, unless the complainant can induce this court by its decree herein to set aside and annul the decree in said cause No. 1346, which it has no power, jurisdiction or authority to do, and to justify which annulment no proper allegations are made and no proper cause shown by the said amended bill.

5. That all of the matters and things set up in said amended bill relative to the contract relations between Dr. Raphael Garcia Cava-

zos, Maria Josefa Cavazos, and Charles Stillman and James Stillman relative to their title to the Fort Brown reservation, and particularly the alleged contract of October 12th, 1852, the deed of March 25th, 1875, and the contract of August 7th, 1885, are *res inter alios acta* and the averments of the bill with reference thereto are irrele-
506 vant, impertinent and have no relation to or any effect upon any of the rights, claims or demands of the complainants.

6. That all of the allegations in said amended bill relative to the alleged fraudulent deprivation by Stillman of the estate of Cavazos of any part of the appropriation of the $160,000, and relative to the acquiescence by Carson, administrator, in said alleged fraudulent deprivation, are irrelevant and impertinent and even if true, in nowise increase or diminish the rights and claims of the complainants to any part of the fund, the title to which is at issue in this case.

7. That the averments contained in paragraph 5 of section 6 of said amended bill are either irrelevant and immaterial to any issue herein, or they are mere denials that Stillman has made or is entitled to make the disbursements set up in his answer, or that complainants can be charged therewith, that these averments contain no new matter and are therefore unnecessary and improper to set up in an amended bill because they do not amount in substance to a special replication.

8. That the interrogatories annexed to said amended bill are all based upon and grow out of the illegal, improper, irrelevant and unlawful averments, above specially demurred to, and the defendant ought not to be required to answer the same.

Wherefore, and for divers other good causes for demurrer appearing in said bill, this defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said amended bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

FARRAR, JONAS, KRUTSCHNIT & GURLEY, *Sol'rs.*

EDGAR H. FARRAR, *Counsel.*

The affidavit of James Stillman to the above demurrer
507 that it is not interposed for delay, is hereby waived.

C. L. BATES,
Counsel for Complainants.

I hereby certify that in my opinion the above demurrer is well founded in point of law.

EDGAR H. FARRAR,
Counsel for James Stillman.

(Endorsed: U. S. circuit court, western district of Texas, at Brownsville. No. 21 In equity. C. B. Combe, ex., *et al. vs.* James

Stillman, *et als.* Separate demurrer of James Stillman to second amended bill of C. B. Combe, executor. Filed May 23, 1899. D. H. Hart, clerk. Farrar, Jonas, Krutschnit & Gurley, solicitors.)

508 *Demurrer and Exceptions of Defendant Thomas Carson to Complainants' Amended Bill.*

U. S. Circuit Court, Western District of Texas, at Brownsville.

C. B. COMBE, EX., ET AL.
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

The separate demurrer of Thomas Carson, individually and as administrator of the estate of Maria Josefa Cavazos, deceased, one of the defendants in this cause, to the second amended bill of C. B. Combe, executor, *et al.*

This defendant by protestation, especially reserving the point hereinbefore made by him that this court has no jurisdiction over him in this cause, or over this cause, and not confessing any or all of the matters and things in the complainants's said second amended bill of complaint contained, to be true, in such manner and form as the same is therein set forth and alleged, doth demur to said bill and for cause of demurrer showeth: That the said second amended bill doth not contain any matter of equity wherein this court can ground any decree or give to the complainants any relief against this defendant, and that complainants have not in and by said amended bill made or stated such a case as entitles them in a court of equity to any discovery from this defendant as to the matters contained in the said amended bill or any of such matters.

And for other and special cause of demurrer to said second amended bill, this defendant showeth:

1. That all the matters and things set forth in section four of complainants' amended bill, except the averments relative to one-half interest in the Salinas claim and the averments relative to the rents and revenues of that and of the Fort Brown property, since 1846,
509 are either mere repetitions of the statements already set forth in the original and amended bill herein, or negative averments of the matters contained in this defendant's answer thereto, and contain no new matter and are therefore unnecessary and improper to be set up in an amended bill because they do not amount in substance to a special replication.

2. That the averments in section 4 of said amended bill relative to the alleged ownership by the Powers estate of one-half of 22½ acres claimed under Miguel Salinas are so vague and indefinite and so defective in details and fail so utterly to deraign the alleged title from Salinas to Powers and from Salinas to Francisca Cavazos, the

conceded title holder in 1833, that this defendant cannot safely plead thereto and cannot be held to plead thereto.

3. That the said amended bill does not state any facts or make any allegations whatever on which to base a claim for the rents and revenues of any portion of the Paredes tract or of any portion of the Salinas claim prior to the time when Stephen Powers became the alleged owner thereof, and the said bill does not show any right, title or interest in and to the rents and revenues of said two properties during the time when the alleged title to the same was in the alleged grantors of Stephen Powers.

4. That all the matters and things set up in said amended bill relative to the partition proceeding No. 1346 of the docket of Cameron county not only shows that said proceeding does not bind this defendant in this cause, but also show that they are irrelevant to any issue herein unless the complainant can induce this court by its decree herein to set aside and annul the decree in said cause No. 1346, which it has no power, jurisdiction or authority to do and to justify which annulment, no proper allegations are made and no proper cause shown by the said amended bill.

5. That all of the matters and things set up in said amended bill relative to the contract relations between Dr. Raphael Garcia Cavazos, Maria Josefa Cavazos and Charles Stillman and James Stillman, relative to their title to the Fort Brown reservation and particularly the alleged contract of October 12th, 1852, the deed of March 25th, 1875, and the contract of August 7th, 1885, are
510 *res inter alios acta* and the averments of the bill with reference thereto are irrelevant, impertinent and have no relation to or any affect upon any of the rights, claims or demands of the complainants.

6. That all of the allegations in said amended bill relative to the alleged fraudulent deprivation by Stillman of the estate of Cavazos of any part of the appropriation of the hundred and sixty thousand dollars, and relative to the acquiescence by Carson, administrator, in said alleged fraudulent deprivations *and* are irrelevant and impertinent and even if true, in nowise increase or diminish the rights and claim- of the complainants to any part of the fund, the title to which is at issue in this case.

7. That the averments contained in paragraph 5, section 6 of said amended bill are either irrelevant and immaterial to any issue herein, or they are mere denials that Stillman has made or is entitled to make the disbursements set up in his answer, or that complainants can be charged therewith, that these averments contain no new matter and are therefore unnecessary and improper to set up in an amended bill because they do not amount in substance to a special replication.

8. That the interrogatories annexed to said amended bill are all based upon and grow out of the illegal, improper, irrelevant and unlawful averments, above especially demurred to, and the defendant ought not to be required to answer the same.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant doth demur thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said amended bill and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

— —.

The affidavit of Thomas Carson to the above demurrer that it is not interposed for delay, is hereby waived.

511 C. L. BATES,
Counsel for Complainants.

I hereby certify that in my opinion the above demurrer is well founded in point of law.

THOS. H. FRANKLIN,
Counsel for Thomas Carson, Adm'r, etc.

(Endorsed: No. 21 in eq. C. B. Combe *vs.* James Stillman, *et al.* Demurrer and exceptions of def't Thos. Carson to complainants' amended bill. Filed this third day of June, 1899. D. H. Hart, clerk, by A. Grosenbacher, deputy.)

512 *Order Directing the Payment of Fund into Court.*

In the United States Circuit Court in and for the Western District of Texas, at Brownsville.

C. B. COMBE, Executor, ET AL.
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

This cause came on to be heard at this term by agreement of counsel at San Antonio, on the rule of C. B. Combe, executor *et al.* upon James Stillman and Thomas Carson, administrator, to pay over to S. J. Brooks, receiver herein, the fund of $160,000 collected by them from the United States Government under the act of Congress of March 3rd, 1885, and was argued by counsel for all the parties;

Whereupon, and upon consideration thereof, it is ordered, adjudged and decreed that said rule be discharged as against Thomas Carson, administrator, on the ground that he has never had possession or custody of said fund.

It is further ordered, adjudged and decreed that James Stillman be and he is hereby ordered to pay to S. J. Brooks, receiver in this cause, by depositing to the credit of this cause in the San Antonio National Bank of San Antonio, Texas, on or before the 1st Monday in July, 1899, the sum of one hundred and twenty-six thousand eight hundred and eighty-nine and 98/100 dollars, being

the balance found by the court to be remaining now in the hands of James Stillman of the sum of $160,000 collected by him from the Government of the United States for the purchase, use and occupation of Fort Brown reservation, under the act of Congress of March 3rd, 1885.

It is further, ordered, adjudged and decreed that the court will accept as a satisfactory compliance with this order, the deposit as aforesaid, and within the time aforesaid, of fifty thousand dollars, and the execution by said James Stillman of a bond for seventy-six thousand eight hundred and eighty-nine and 98/100 dollars, to the said S. J. Brooks, receiver, or his successors in office,
513 with some surety company, as surety, authorized to do business in the State of Texas, conditioned that said James Stillman shall pay and satisfy any final decree that may be entered against him in this cause.

It is further ordered, adjudged and decreed that said S. J. Broosk, receiver, shall draw no checks upon the said fund, and that the said bank shall not pay any checks upon the said fund except upon the order of this court.

It is further ordered, adjudged and decreed that nothing in this order shall be held or considered to prejudice or affect the rights and claims of any of the parties to this record to any part of the fund in question, or the right of James Stillman, or Thomas Carson, administrator, to set up and claim any disbursements they may have made in reference thereto or in reference to the Fort Brown reservation.

It is further ordered, adjudged and decreed that this order may be entered upon the minutes of this day, the 23rd of May, 1899, in the San Antonio division, and that the original thereof be transmitted to Brownsville and entered in the chancery order book of that division.

Ordered, adjudged and decreed in open court at San Antonio, this 23rd day of May, 1899.

T. S. MAXEY, *Judge.*

(Endorsed: No. 21 in equity. U. S. circuit court, western district of Texas, at Brownsville. C. B. Combe, ex. *et al. vs.* James Stillman, *et al.* Decree on rule to pay over. Filed May 23rd, 1899. D. H. Hart, clerk. Filed May 27th, 1899, D. H. Hart, by Charles F. Tighlamn, deputy.)

514 *Bond from James Stillman to S. J. Brooks, Receiver.*

United States Circuit Court, Western District of Texas.

C. B. COMBE, Executor, and Others, Complainants,
against
JAMES STILLMAN and Others, Defendants.

Know all men by these presents: That we, James Stillman, of the city of New York, principal, and the Fidelity and Deposit Company of Maryland, a corporation of the State of Maryland, having an office and principal place of business for the State of New York, at No. 35 Wall street, in the borough of Manhattan, in the city of New York, and duly authorized to execute bonds and undertakings pursuant to the act of Congress of August 13th, 1894, entitled, "An act relative to recognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon," surety, are held and firmly bound unto S. J. Brooks, as receiver, appointed by the United States circuit court, in and for the western district of Texas, in a certain suit in equity therein pending, in which C. B. Combe, executor, and others, are complainants, and the said James Stillman, and others, are defendants, or to the successors in office of the said receiver, in the sum of seventy-six thousand eight hundred and eighty-nine dollars and ninety-eight cents ($76,889.98), lawful money of the United States of America, to be paid to the said S. J. Brooks, or his successors in office; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals. Dated at the city of New York, June 21st, 1899.

515 The condition of the above obligation is such that if the above bounden James Stillman, his heirs, executors or administrators, shall pay and satisfy any final decree that may be entered against him or them in said suit in equity, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.] JAMES STILLMAN. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.
HENRY B. PLATT, *Vice-President.*

(50 cent stamp internal revenue cancelled.)

Attest: JOHN W. WOOTEN, *Attorney.*

(96 cents worth of internal revenue stamps canceled.)

STATE OF NEW YORK, }
County of New York, } ss.:

On this 22nd day of June, 1899, before me personally appeared James Stillman, to me known and known to me to be the individual described in and who executed the foregoing bond and duly acknowledged to me that he executed the same.

HORACE M. KILBORN,
[SEAL.] *Notary Public, Kings Co.*

Cf. filed in New York county.

The foregoing bond is approved the 29th day of June, A. D. 1899.

T. S. MAXEY, *Judge.*

STATE OF NEW YORK, }
County of New York, } ss.:

On the 21st day of June, in the year 1899, before me personally came Henry B. Platt, to me known, who, being by me duly
516 sworn, did depose and say, that he resided in the city of New York; that he was the vice-president of the Fidelity and Deposit Company of Maryland, the corporation described in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3 of chapter 720 of the Session Laws of the State of New York, for the year 1893. And the said Henry B. Platt further said that he was acquainted with John W. Wooten and knew him to be the attorney of said company; that the signature of the said John W. Wooten subscribed to the within instrument was in the genuine handwriting of the said John W. Wooten, and was subscribed thereto by like order of the board of directors, and in the presence of him the said Henry B. Platt.

ERNEST L. HICKS,
[SEAL.] *Notary Public, New York County.*

At a regular meeting of the board of directors of the Fidelity and Deposit Company of Maryland, held at the office of the company in the city of Baltimore, State of Maryland, on the 1st day of June, 1898, at which was present a quorum of said directors, duly authorized to act in the premises, on motion, it was unanimously

"Resolved, That in pursuance of section 811 of the Code of Civil Procedure of the State of New York, Henry B. Platt, vice president, or John W. Wooten, attorney, or Frank H. Platt, Theodore F. Wood, Edward T. Platt, Joseph A. Flynn, and Hugh M. Allwood, attorneys

in fact of this company in the State of New York be, and each of them is, hereby authorized and empowered to sign, execute and deliver any and all bonds or undertakings for or on behalf of this company, and to attach thereto the seal of the corporation, the same to be attested by the said John W. Wooten, attorney of the company, or by either one of the other persons above named, as occasion may require.

517 COUNTY OF NEW YORK, *ss:*

I, John W. Wooten, attorney of the Fidelity and Deposit Company of Maryland, have compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of the said original resolution. Given under my hand and seal of the company at the city of New York, this 21st day of June, 1899.

[SEAL.] JOHN W. WOOTEN, *Attorney.*

Fidelity and Deposit Company of Maryland.

Statement, March 30, 1899.

Resources.		Liabilities.	
Real estate	$600,000.00	Capital stock	$1,500,000.00
Stocks and bonds	1,541,527.00	Surplus and undivided profits	2,012,902.22
Railroad bonds	1,171,077.50	Premium reserve	552,104.50
Net premiums due	153,824.13	Claims in process of adjustment	7,020.72
Cash in bank, etc	630,664.37	Claims reported	
		Proof not filed	25,065.76
	$4,097,093.20		$4,097,093.20

STATE OF NEW YORK, *County of New York,* } *ss:*

John W. Wooten, being duly sworn, says that he is the attorney of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said company, as of March 30th, 1899, to the best of his knowledge and belief, and that the financial condition of said company is as favorable now as it was when such statement was made.

JOHN W. WOOTEN.

Subscribed and sworn to before me, this 21st day of June, 1899.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

518 Whereas, the Fidelity and Deposit Company of Maryland, a corporation duly incorporated under the laws of the State of Maryland, has appointed an agent as required by section 2 of the act of August 13, 1894, entitled, "An act relative to recognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon;" and has deposited with me, its charter or articles of incorporation and the statement required by section 3 of said act; and has satisfied me that it has authority under said charter to do the business provided for in said act, that it has a paid up capital of not less than $250,000.00 in cash, or its equivalent, and that it is able to keep and perform its contracts;

Now, therefore, the requirements of said act preliminary to the transaction of business thereunder in the above and all other particulars having been fully complied with the said Fidelity and Deposit Company of Maryland is hereby granted authority to do business under said act.

Department of Justice, Washington, D. C. August 28th, 1894.

RICHARD OLNEY,
[SEAL.] *Attorney-General.*

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., *July* 21, 1898.

The annexed is a true copy of an original authorization to do business, issued by the Attorney-General under the act of Congress approved August 13th, 1894.

Witness my hand and the seal of the department.

[SEAL.] C. B. CORNBORGER,
Acting Chief Clerk.

519 (Endorsed:) 21 equity at Brownsville. U. S. circuit court, western district of Texas. C. B. Combe, executor, and others, complainants, against James Stillman, and others, defendants. Bond. Filed this 29th day of June, 1899. D. H. Hart, clerk, by A. Grosenbacher, deputy. (116½) Filed Feb'y 16, 1903, C. Dart, clerk, Filed June 29th, 1899, D. H. Hart, clerk. Surety: Fidelity and Deposit Company of Maryland, 35 Wall street, New York.

520 *Order on Demurrers of James Stillman and Thomas Carson to Second Amended Bill of C. B. Combe, Ex'r, et al.*

U. S. Circuit Court, Western District of Texas, at Brownsville.

C. B. COMBE, Executor, ET AL.
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

This cause came on to be heard by agreement of counsel, in chambers at San Antonio, on July 22nd, 1899, as if in term time at

Brownsville, on the demurrers, general and special, of James Stillman and Thomas Carson, administrator, etc., to the second amended bill of C. B. Combe, executor, *et al.*, and was argued by counsel;

Whereupon and on consideration thereof, it is ordered, adjudged and decreed that the general demurrers of said defendants be and the same are overruled.

And as regards the special demurrers of said defendants to said second amended bill the court grants leave to the said defendants, asked in open court, to withdraw the first, fifth, sixth, seventh and eighth special demurrers, and to set up the same matter, if they be so advised, by the rule day in August, by way of exception for irrelevance and impertinence.

As regards the second and third grounds of special demurrer, it is ordered, adjudged and decreed that the same be overruled.

As regards the fourth ground of special demurrer, it is ordered, adjudged and decreed that the same be sustained to the extent of holding that the decree in the partition record set up in said second amended bill known as cause No. 1346 of the docket of the district court of Cameron county, is not *res adjudicata* against the defendants Stillman and Carson as to whether the Paredes tract
521 covers any part of the Fort Brown reservation.

It is further ordered, adjudged and decreed that defendants be relieved from answering the first interrogatory propounded to them in said second amended bill.

It is further ordered, adjudged and decreed that this judgment be entered in the chancery order book at Brownsville.

And note is hereby made on this judgment, at the request of complainants' counsel, that complainants except to the ruling of the court in so far as the same sustains the said special demurrers.

Ordered, adjudged and decreed in chambers at San Antonio, this 22nd, day of July, A. D. 1899.

T. S. MAXEY, *U. S. Judge.*

Endorsed: No. 21 Equity. In the circuit court of the United States in and for the western district of Texas, at Brownsville. C. B. Combe, ex'r *vs.* James Stillman, *et al.* Order on demurrers, general and special, of James Stillman and Thomas Carson, to second amended bill of C. B. Combe, ex'r, *et al.* Filed this 22nd day of July, 1899. D. H. Hart, clerk, by A. Grosenbacher, deputy.

522 *Alias Subpœna in Chancery for Charles S. Dana.*

No. 21.

Alias Subpœna in Chancery.

The President of the United States to Charles S. Dana, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the

United States circuit court, for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in February, A. D. 1900, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court, on 14th day of June, 1897, against James Stillman and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice [SEAL.] of the United States, and the seal of said circuit court hereunto affixed at Brownsville, this 30th day of December, 1899.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By CHARLES F. TIGHLMAN, *Deputy.*

The defendant Charles S. Dana is required to enter his appearance in the above suit on or before the first Monday in February, 1900, otherwise the bill of complaint filed against him will be taken *pro confesso.*

D. H. HART, *Clerk*,
By CHARLES F. TIGHLMAN, *Deputy.*

523 Endorsed: No. 21. United States circuit court, western district of Texas, at Brownsville, C. B. Combe, executor, *vs.* James Stillman, *et al.* Alias subpœna in chancery. Issued December 30th, 1899. Returnable — 1900. D. H. Hart, clerk, by Charles F. Tighlamn, deputy. Copy for Charles S. Dana. Filed Jan'y 17, 1900. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

Marshal's Return.

Received in this office this 8th day of January, 1900, and executed on the 9th day of January, 1900, by delivering at the last and usual place of abode of the within named Charles S. Dana, 300 Berkley street, Boston, in hand to Miss Minnie Quilty, a domestic, a true and attested copy of this subpœna.

CHARLES K. DARLING,
U. S. Marshal,
By ALBERT TUTTLE, *Deputy.*

Service	$2.00
Mileage	.12
Total	$2.12

524 *Subpœna in Chancery for Marie Grogan Dana.*

No. 21. Equity.

Subpœna in Chancery.

The President of the United States to Marie Grogan Dana, Greeting:

You are hereby commanded that laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in September, A. D. 1898, then and there — appear and answer the exigency of a certain bill of complaint of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on 14th day of June, 1897, against Thomas Carson, as administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and in his own right, Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, Francisca Yturria, R. D. Hinojosa and H. E. Woodhouse of Brownsville, Texas; Henry Miller of Chicago, Illinois; and Charlotte Miller of Brownsville, Texas; Mat Gerhardt of Los Angeles, California, Charles S. Dana and his wife, Marie Grogan Dana of Boston, Mass., and James Stillman of New York city, New York, and to do further and receive what shall then and there be considered in that behalf and this you are not to omit, under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court hereunto affixed at Brownsville 12th day of July, 1898.

[SEAL.]

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By CHARLES F. TIGHLMAN, *Deputy.*

525 The defendant Marie Grogan Dana, is required to enter *his* appearance in the above suit on or before the first Monday in September, 1898, otherwise the bill of complaint filed against *him* will be taken *pro confesso.*

D. H. HART, *Clerk,*
By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21 Equity. United States circuit court western district of Texas, at Brownsville. C. B. Combe, executor *vs.* James Stillman, *et al.* Subpœna in chancery. Issued July 12, 1898, re-

turnable August 1, 1898. D. H. Hart. Original for Maria Grogan Dana, to be served on J. B. Wells, Esq., her att'y of record. Filed July 29th, 1898. D. H. Hart, clerk, by C. F. Tighlman, deputy.

Marshal's Return.

Came to hand this the 28th day of July, A. D. 1898, and executed this 28th day of July, A. D. 1898, upon Maria Grogan Dana, by delivering to James B. Wells, Esqr., in person, in the the city of Brownsville, State of Texas, attorney of record for Maria Grogan Dana, a true copy of this writ, at the time — serving said process upon the said Jas. B. Wells, he stated to me that he didn't at all admit that he the said Wells was attorney of record, or at all, in this cause for either of the said defendants Chas. S. Dana or Maria Grogan Dana his wife, or at all authorized to receive or accept service of said process, and asked that I so return the facts.

GEO. L. SIEBRECHT,
U. S. Marshal, W. D. of T.,
By JOHN M. HAYNES, *Deputy.*

526 *Subpœna in Chancery for Charlotte Miller.*

No. 21.

Subpœna in Chancery.

The President of the United States to Charlotte Miller, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable, the United States circuit court for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in February, A. D. 1900, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on the 14th day of June, 1897, and C. B. Combe, executor, *et als.* first amended original bill, exhibited and filed in the office of said court on the 29th day of October, 1898, and said C. B. Combe executor, *et al's.*, second amended original bill, exhibited and filed in the office of said court on 1st day of May, 1899, against James Stillman and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, Francisco Yturria, H. E. Woodhouse, Henry Miller, Charlotte Miller, Charles S. Dana and his wife, Maria Grogan Dana, Frances E. Landrum, Annette P. Hicks, Agnas Anastacia Brown, Bernardo Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas and R. D. Hinojosa,

and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice [SEAL.] of the United States, and the seal of said circuit court hereunto affixed at Brownsville, this 4th day of January, 1900.

D. H. HART,

527 *Clerk U. S. Circuit Court, W. D. T.*

By CHARLES F. TIGHLMAN, *Deputy.*

The defendant Charlotte Miller is required to enter her appearance in the above suit on or before the first Monday in February, 1900, otherwise the bill of complaint filed against her will be taken *pro confesso*.

D. H. HART, *Clerk*,

By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, ex'r *vs.* James Stillman, *et al.* Subpœna in chancery issued January 4th, 1900, returnable —— 1900, C. H. Hart, clerk, by Charles F. Tighlman, deputy. Original, Charlotte Miller, Cameron county. Filed Jan'y 18, 1900. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

Marshal's Return.

Received in this office this 4 day of January, A. D. 1900, and executed on the 5 day of January, 1900, by delivering to the within named defendant Charlotte Miller in person, a true copy of this subpœna.

GEO. L. SIEBRECHT,

U. S. Marshal,

By JOHN M. HAYNES, *Deputy.*

Service $2.00.

528 *Subpœna in Chancery for Francisco Yturria.*

No. 21.

Subpœna in Chancery.

The President of the United States to Francisco Yturria, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court, for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in February, A. D. 1900, then and there to appear and answer the

exigency of a certain bill of complaint of C. B. Combe, executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on the 14th day of June, 1897, and C. B. Combe, executor, *et als.* first amended original bill, exhibited and filed in the office of said court on the 29th day of October, 1898, and said C. B. Combe, executor, *et als.*, second amended original bill, exhibited and filed in the office of said court on 1st day of [illegible], 1899, against James Stillman and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, Francisco Yturria, H. E. Woodhouse, Henry Miller, Charlotte Miller, Charles S. Dana, Marie Grogan Dana, his wife, Frances E. Landrum, Annette P. Hicks, Agnes Anastacia Browne, Bernardo Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, and R. D. Hinojosa, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court hereunto affixed at Brownsville, this fourth day of January, 1900.

[SEAL.] D. H. HART,
Clerk of U. S. Circuit Court, W. D. T.,
By CHARLES TIGHLMAN, *Deputy.*

529 The defendant Francisco Yturria, is required to enter his appearance in the above suit on or before the first day in February, 1900, otherwise the bill of complaint filed against him will be taken *pro confesso.*

D. H. HART, *Clerk.*
By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, ex'r *et al. vs.* James Stillman, *et al.* Subpœna in chancery issued January 4, 1900. D. H. Hart, clerk, by Charles F. Tighlman, deputy. Original. Francisco Yturria, Cameron county. Filed Jan'y 18, 1900. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

Marshal's Return.

Received in this office this 4 day of January, A. D. 1900, and executed on the 5 day of January, 1900, by delivering to the within named defendant Francisco Yturria in person, a true copy of this subpœna.

GEO. L. SIEBRECHT,
U. S. Marshal,
By JOHN M. HAYNES, *Deputy.*

Service $2.00. Total $2.00.

530 *Subpœna in Chancery for Annette P. Hicks.*

No. 21.

Subpœna in Chancery.

The President of the United States to Annette P. Hicks, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in February, A. D. 1900, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, executor of the last will and testament of C. B. Powers, deceased, exhibited and filed in the office of said court, on the 14th day of June, 1897, and C. B. Combe, executor, *et als.*, first amended original bill, exhibited and filed in the office of said court on the 29th day of October, 1898, and said C. B. Combe, executor *et als.* second amended original bill, exhibited and filed in the office of said court on 1st day of May, 1899, against James Stillman and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, Francisco Yturria, H. E. Woodhouse, Henry Miller, Charlotte Miller, Charles S. Dana and his wife Marie Grogan Dana, Francis E. Landrum, Annette P. Hicks, Agnes Anastacia Browne, Bernardo Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas and R. D. Hinojosa, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the United States, and the seal of said circuit court hereunto affixed at Brownsville, this 4th day of January, 1900.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
531 By CHARLES F. TIGHLMAN, *Deputy.*

The defendant Annette P. Hicks is required to enter her appearance in the above suit on or before the first Monday in February, 1900, otherwise the bill of complaint filed against her will be taken *pro confesso.*

D. H. HART, *Clerk,*
By CHARLES S. TIGHLMAN, *Deputy.*

Endorsed: No. 21. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, ex'r. *et al. vs.* James Stillman, *et al.* Subpœna in chancery, issued January 4, 1900, returnable —— 1900. D. H. Hart, clerk, by Charles F. Tighlman, deputy. Original. Annette P. Hicks, Cameron county. Filed Jan'y 18, 1900. D. H. Hart, clerk, by C. F. Tighlman, deputy.

Marshal's Return.

Received in this office this 4th day of January, 1900, and executed on the 5 day of January, 1900, by delivering to the within named defendant Annette P. Hicks, in person, a true copy of this subpœna.

GEO. L. SIEBRECHT,
U. S. Marshal.
By JOHN M. HAYNES, *Deputy.*

Service $2.00. Total $2.00.

532 *Subpœna in Chancery for Juan Salinas.*

No. 21.

Subpœna in Chancery.

The President of the United States to Juan Salinas, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court, for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in February, A. D. 1900, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on the 14th day of June, 1897, and C. B. Combe, executor, *et als.* first amended original bill, exhibited and filed in the office of said court on the 29th day of October, 1898, and said C. B. Combe, executor *et als.* second amended original bill, exhibited and filed in the office of said court on the 1st day of May, against James Stillman and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, Francisco Yturria, H. E. Woodhouse, Henry Miller, Charlotte Miller, Charles F. Dana and his wife Marie Grogan Dana, Frances E. Landrum, Annette P. Hicks, Agnes Anastacia Browne, Bernardo Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, and R. D. Hinojosa. And to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of *of* said circuit court hereunto affixed at Brownsville this fourth day of January, 1900.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
533 By CHARLES F. TIGHLMAN, *Deputy.*

The defendant Juan Salinas is required to enter his appearance in the above suit on or before the first Monday in February, 1900, otherwise the bill of complaint filed against him will be taken *pro confesso*.

D. H. HART, *Clerk*,
By CHARLES F. TIGHLMAN, *Deputy*.

Endorsed: No. 21. United States circuit, court, western district of Texas, at Brownsville. C. B. Combe, ex'r, *et al.*, *vs.* James Stillman, *et als.* Subpœna in chancery, issued January 4th, 1900, returnable ——. D. H. Hart, clerk, by Charles F. Tighl*amn*, deputy. Original for Juan Salinas, Cameron county. Filed Jan'y 18, 1900. D. H. Hart, clerk, by Charles F. Tighlman, deputy.

Marshal's Return.

Received in this office this 4 day of January, A. D. 1900, and executed on the 6 day of January, 1900, by delivering to the within named defendant Juan Salinas in person, a true copy of this subpœna.

GEO. L. SIEBRECHT,
U. S. Marshal,
By JOHN M. HAYNES, *Deputy*.

Service $2.00. Total $2.00.

534 *Subpœna in Chancery for Agnes Anastacia Browne.*

No. 21.

Subpœna in Chancery.

The President of the United States to Agnes Anastacia Browne, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable, the United States circuit court, for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in February, A. D. 1900, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on the 14th day of June, 1897, and C. B. Combe, executor *et als.*' first amended original bill, exhibited and filed in the office of said court on the 29th day of October, 1898, and said C. B. Combe *et als.*' second amended original bill, exhibited and filed in the office of said court on first day of May, 1899, against James Stillman and Thomas Carson, administrator

with the will annexed of the estate of Marie Josefa Cavazos, deceased, Francisco Yturria, H. E. Woodhouse, Henry Miller, Charlotte Miller, Charles S. Dana and his wife, Marie Grogan Dana, Frances E. Landrum, Annette P. Hicks, Agnes Anastacia Browne, Bernardo Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, and R. D. Hinojosa, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit under the penalty of two hundred dollars.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court hereunto affixed at Brownsville, this 4th day of January, 1900.

535

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By CHARLES F. TIGHLMAN, *Deputy.*

The defendant Agnes Anastacia Browne, is required to enter her appearance in the above suit on or before the first Monday in February, 1900, otherwise the bill of complaint filed against her will be taken *pro confesso.*

D. H. HART, *Clerk*,
By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, ex'r *et al. vs.* James Stillman, *et al.* Subpœna in chancery issued January 4, 1900, returnable —— —, 1900. D. H. Hart, clerk, by Charles F. Tighlman, deputy. Original Agnes Anastacia Browne, Cameron county. Filed January 18, 1900. D. H. Hart, by Charles F. Tighlman, deputy.

Marshal's Return.

Received in this office this 4 day of January, A. D. 1900, and executed on the 5 day of January, 1900 by delivering to the within named defendant Agnes Anastacia Browne, in person, a true copy of this subpœna.

GEO. L. SIEBRECHT,
U. S. Marshal,
By JOHN M. HAYNES, *Deputy.*

Service $2.00.

536 In the United States Circuit Court in and for the Western District of Texas, Brownsville Division.

C. B. COMBE, Executor, ET AL.
vs.
JAS. STILLMAN ET AL. } No. 21. In Equity.

In the above numbered and styled cause comes the defendant, Thos. Carson, as administrator of the estate of Maria J. Cavazos, deceased, and individually, and without waiving any of his pleas heretofore filed herein but specially insisting on same and specially insisting that this court has no jurisdiction of this cause nor of this defendant, and with leave of court, excepts to the second amended bill of complaint, C. B. Combe, executor, and for exception says:

First exception.

The defendant shows that all the matters and things set forth in section 4 of the complainant's said amended bill, except the averments relative to one-half interest in the Salinas claim and the averments relative to the rents and revenues of that and of the Fort Brown property since 1846, are either mere repetitions of the statements already set forth in the original and amended bill- herein or negative averments of the matters contained in this defendant's answer thereto and contain no new matter, and are therefore unnecessary and improper to be set up in an amended bill, because they do not amount in substance to a special replication and are wholly irrelevant, immaterial and impertinent.

Second exception.

That all of the matters and things set up in said amended bill in section 6 thereof are *res inter alios acta* and the averments therein contained are impertinent, irrelevant and have no relation to nor any effect upon any of the rights, claims or demands of the complainant.

Third exception.

537 That interrogatories two, three, four and five to said amended bill are all based upon and grow out of the improper, illegal, irrelevant and impertinent averments excepted to in the foregoing exceptions and are therefore improper, irrelevant and impertinent and the defendant ought not to be required to answer the same.

Wherefore, defendant prays that his said exceptions be sustained and that the said irrelevant and impertinent matters to which exceptions are taken be expunged and that said interrogatories be

likewise expunged from said amended bill, and the costs incident thereto be taxed against said complainant.

DENMAN, FRANKLIN, COBBS & McGOWN,
DUVAL WEST,
Solicitors and of Counsel for Defendant Thomas Carson, Adm'r and Individually.

I, Thos. H. Franklin, hereby certify that I am solicitor and counsel for the above named defendant in the foregoing cause, and that in my opinion the foregoing exceptions are well founded in point of law.

THOS. H. FRANKLIN,
Solicitor and of Counsel for Above-named Defendant.

Endorsed: No. 21 In equity. C. B. Combe, executor, *et al.*, *vs.* James Stillman, *et al.* Exceptions of Thomas Carson to second amended bill. Filed July 25th, 1900. D. H. Hart, clerk, by Chas. F. Tighlman, deputy.

538 *Exeptions of James Stillman to Second Amended Bill.*

In the United States Circuit Court in and for the Western District of Texas, Brownsville Division.

C. B. COMBE, Executor, ET AL.
vs.
JAMES STILLMAN ET AL. } No. 21. Equity.

In the above numbered and styled cause comes the defendant, James Stillman, and without waiving any of his pleas heretofore filed herein, but specially insisting on same and specially insisting that this court has no jurisdiction of this cause nor of this defendant and with leave of court, excepts to the second amended bill of complainant C. B. Combe, executor, and for exception says:

First exception.

The defendant shows that all the matters and things set forth in section 4 of complainant's said amended bill, except the averments relative to one-half interest in the Salinas claim and the averments relative to the rents and revenues of that and of the Fort Brown property since 1846, are either mere repetitions of the statements already set forth in the original and amended bill- herein or negative averments of the matters contained in this defendant's answer thereto and contain no new matter, and are therefore unnecessary and improper to be set up in an amended bill, because they do not amount in substance to a special replication and are wholly irrelevant, immaterial and impertinent.

Second exception.

That all of the matters and things set up in said amended bill in section 6 thereof are *res inter alios acta* and the averments therein contained are impertinent, irrelevant and have no relation to nor any effect upon any of the rights, claims or demands of the complainant.

539 Third exception.

That interrogatories two, three, four and five to said amended bill are based upon and grow out of the improper, illegal, irrelevant and impertinent averments excepted to in the foregoing exceptions and are therefore improper, irrelevant and impertinent and the defendants ought not to be required to answer the same.

Wherefore, defendant prays that his said exceptions be sustained and that the said irrelevant and impertinent matters to which exceptions are taken be expunged and that said interrogatories be likewise expunged from said amended bill, and the costs incident thereto be taxed against said complainant.

E. H. FARRAR,
Solicitor and of Counsel for Defendant James Stillman,
P'r J.

Endorsed: No. 21 In equity. C. B. Combe, executor, etc., *vs.* James Stillman, *et al.* Exceptions of James Stillman to second amended bill. Filed July 25th, 1900. D. H. Hart, clerk. By Chas. F. Tighlman, d'y.

540 *Application for Substituted Service on Henry Miller.*

In the Circuit Court of the United States for the Western District of Texas, Brownsville Division.

C. B. COMBE, Ex'r, ET AL.
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

To the judges of said court:

(1.) The plaintiffs represent to the court that this suit is brought to establish a trust in the Fort Brown fund and to have it paid to the parties found by the decree of this court in this cause to be entitled to the same, the plaintiffs seeking to enforce claim and title to one-half of said fund, as the same appears to their pleadings on file, to which reference for certainty is here made.

(2.) That fifty thousand dollars of said fund are now in the possession and jurisdiction of this court; and defendant Stillman has executed a bond with sufficient security to account to this court for — dollars of said fund, if so required by the court, which bond is

in the possession and jurisdiction of this court; reference being had to said bond and all the proceedings of this court, in this cause, in reference to said fund and said bond, for greater certainty.

(3.) That Henry Miller, who is named in the bill as a defendant in this suit, reference to said bill and its amendment, being here made for certainty, is not an inhabitant of the western district of Texas, but is an inhabitant of the northern district of the State of Iowa, and resides at Charles City in said State of Iowa; and the said Henry Miller has not entered his appearance in this suit.

(4.) Wherefore, the plaintiffs pray that your honor make
541 and enter an order herein, directing said absent defendant, Henry Miller, to appear and plead, answer or demur to the plaintiffs' original bill and amendments thereto, on and by a day certain to be designated in such order; and that a certified copy of said order be served on the said defendant Henry Miller by the United States marshal of the northern district of the State of Iowa, and that a precept or writ of execution in chancery do accordingly issue to said marshal, accompanied by certified copy of said order.

C. L. BATES,
Counsel for Plaintiffs.

WESTERN DISTRICT OF TEXAS, }
Bexar County, Texas. }

I, C. L. Bates, agent of plaintiffs, do solemnly swear that I am informed and believe and on information — belief state that the allegations of the third (3) paragraph of the foregoing petition are true as therein set forth.

C. L. BATES.

Subscribed and sworn to before me this the 30th day of November, A. D. 1900.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By A. GROSENBACHER, *Deputy.*

Endorsed: No. 21 Equity. In the circuit court of the United States in and for the western district of Texas, at Brownsville. C. B. Combe, ex'r, *et al. vs.* James Stillman, *et al.* Application for substituted service on Henry Miller. Filed this 30 day of November, 1900. D. H. Hart, clerk, by D. H. Hart, deputy.

542 *Order Directing Substitute Service on Henry Miller.*

In the Circuit Court of the United States for the Western District of Texas, Brownsville Division.

C. B. COMBE, Ex'r, ET AL.
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Be it remembered that, upon the application of plaintiffs, duly made, in open court, at San Antonio, Texas, on the 30th day of November, A. D. 1900:

It is ordered adjudged and decreed by the court that the defendant Henry Miller, who is alleged to reside at Charles City, in the State of Iowa, do appear and plead or answer or demur to the plaintiffs' amended and original bills in this cause against him and others, by the 1st day of February, A. D. 1901, and that a copy of this order be served on the said defendant Henry Miller, on or before Jan'y 1st, 1901, by the United States marshal for the northern district of the State of Iowa, and that certified copies of this order and a writ of execution in chancery do issue to said United States marshal, commanding him to serve said order upon said defendant, and make due return according to law; and that this order be only entered in the Brownville division.

Ordered, adjudged and decree- in open court at San Antonio, Texas, on the 30th day of November, A. D. 1900.

T. S. MAXEY, *Judge.*

Endorsed: In the circuit court of the United States in and for the western district of Texas, at Brownsville. C. B. Combe, executor, *et al.*, *vs.* James Stillman, *et al.* Order directing substituted
543 service on Henry Miller. Filed this 30 day of November, 1900, D. H. Hart, clerk, by D. H. Hart, deputy.

544 *Subpœna in Chancery for Henry Miller.*

No. 21.

Subpœna in Chancery.

The President of the United States to Henry Miller, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at Brownsville, in chancery sitting, by the 1st day of February, A. D.

1901, then and there to appear and answer the exigency of a certain bill of complaint of C. B. Combe, executor of the last will and testament of Stephen Powers, deceased, exhibited and filed in the office of said court on the 14th day of June, 1897, and C. B. Combe, executor, *et als.*, first amended original bill exhibited and filed in the office of said court on the 29th day of October, 1898, and said C. B. Combe, executor, *et als.* second amended original bill, exhibited and filed in the office of said court on the first day of May, 1899, against James Stillman and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, Francisco Yturria, H. E. Woodhouse, Henry Miller, Charlotte Miller, Charles S. Dana, Marie Grogan Dana, his wife, Frances E. Landrum, Annette P. Hicks, Agnes Anastacia Browne, Bernardo Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, and R. D. Hinojosa, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief [SEAL.] Justice of the United States, and the seal of said court hereunto affixed at Brownsville this 10th day of December, 1900.

D. H. HART.

545 *Clerk U. S. Circuit Court, W. D. T.,*
By CHARLES F. TIGHLMAN, *Deputy.*

The defendant Henry Miller is required to enter his appearance in the above suit on or before the 1st day of February, 1900, otherwise the bill of complaint filed against him will be taken *pro confesso.*

D. H. HART, *Clerk,*
[SEAL.] By CHARLES F. TIGHLMAN, *Deputy.*

Endorsed: No. 21. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, ex'r., *et al. vs.* James Stillman, *et al.* Subpœna in chancery issued Dec'r 10, 1900, returnable —— —, 1900. D. H. Hart, clerk. Original for Henry Miller, Charles City, State of Iowa. Filed Jan'y 4, 1901. D. H. Hart, clerk.

Marshal's Return.

Received in this office this 18 day of December, 1900, and executed on the 19 day of December, 1900, by delivering to the within named defendant Henry Miller, Charles City, Floyd county, State of Iowa, in person, a true copy of this subpœna.

EDWARD KNOTT,
U. S. Marshal,
By B. F. BEAN, *Deputy.*

Service on one	$2.00
Actual expenses	9.71
Total	$11.71

546 *Original Answer of Mary B. Woodhouse, in Her Own Right and as Independent Executrix of the Last Will and Testament of H. E. Woodhouse, Deceased.*

In the United States Circuit Court, Western District of Texas, at Brownsville, Texas.

C. B. COMBE, Independent Executor of the Last Will and Testament of Stephen Powers, Deceased,
vs.
JAMES STILLMAN and THOMAS CARSON, Administrator, etc.
} No. 21. In Equity.

Cometh Mary B. Woodhouse, defendant herein in her own right and as independent executrix of the estate of Humphrey E. Woodhouse, deceased, and enters her appearance in said capacity, and files this her answer to the original bill of complaint, of the above named plaintiff, C. B. Combe, independent executor and also to the bill of revivor of the said plaintiff.

In answer to the said original bill, I, the said Mary B. Woodhouse, say that I adopt all and singular the answers and pleadings heretofore in this cause filed by the testator of this defendant, H. E. Woodhouse, and make the same my answer to the said original bill of plaintiff.

In answer to the said bill of revivor of the said plaintiff, I, the said Mary B. Woodhouse, say that I the independent executrix of the last will and testament of the said Humphrey E. Woodhouse, deceased, and as such and in my own right as devisee and legatee under the said last will and testament, I am the lawful owner of and entitled to all the right of the said H. E. Woodhouse in the subject matter of this suit.

And I adopt all and singular the answer, pleadings and prayers heretofore made and filed herein of the said deceased defend-
547 ant, H. E. Woodhouse, and make the same and all of the same my own, as though now herein especially set forth and pleaded.

MARY B. WOODHOUSE,
In Her Own Right and as Independent Executrix of the Last Will and Testament of H. E. Woodhouse, Deceased,
By her solicitor, STANLEY WELCH.

Endorsed: Number 21 In equity. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, independent executor, *et al. vs.* James Stillman, Thomas Carson, adm'r, *et al.* Original answer of Mary B. Woodhouse, in her own right and as independent executrix of the last will and testament of H. E. Woodhouse, deceased. Filed January 6, 1902. D. H. Hart, clerk, by Benj. Kowalski, deputy.

548 *Answer of James Stillman to Second Amended Bill.*

Circuit Court of the United States for the Western District of Texas.

C. B. COMBE, Independent Executor of the Last Will and Testament of Stephen Powers, Deceased, and Others, Complainants, *against* JAMES STILLMAN, Impleaded with Thomas Carson and Others, Defendants.	In Equity. No. 21.

The separate answer of James Stillman, one of the defendants herein, to the second amended bill of complaint herein, filed —— —, 1899.

This defendant, with special reservation of all his rights under the limited appearance entered by him in this case, and all of his rights under his plea to the jurisdiction herein filed and overruled, and to his demurrer, herein filed and overruled, and still protesting that this honorable court is without jurisdiction to levy its process upon him by substituted service or to take jurisdiction of this cause, and reserving to himself the benefit of any and all exceptions that can or may be taken to the many errors and insufficiencies in the original bill and amended bills contained; for answer thereto, or to so much thereof as this defendant is advised it is material or proper for him to make answer to, saith:

I. This defendant reaffirms and again sets forth all the allegations in his former answer contained, except as the same may be herein modified; and the said former answer, together with this answer, are to be taken and considered as one answer and one record.

II. This defendant has no knowledge or information sufficient to form a belief as to the truth of any of the averments contained in the said second amended bill, with respect to the various conveyances of the Espiritu Santo grant, or of any portion thereof, except as the same may be expressly admitted or set forth in the former answer of this defendant, now on file in this court.

III. This defendant has no knowledge or information sufficient to form a belief as to whether Francesca Cavazos ever sold or conveyed to José Miguel Paredes the land alleged in the said last amended

bill to have been conveyed by her to him, or whether any
549 tract of land, sold by any one to the said Paredes, fronted on the Rio Grande or extended back to the Arroyo Colorado, or whether Stephen Powers or Maria Grogan Dana, or her husband, Charles S. Dana, ever became the ownor of or seized in fee simple, or otherwise, of the land described in *in* the said last amended bill, as owned by them, or whether the division or boundary line, mentioned in the last amended bill, was not surveyed, ascertained or settled at some other time and manner, and under some other authority than that alleged in the said second amended bill.

IV. This defendant, upon information and belief, denies that the ten sitios or square leagues off of the eastern part of the middle third of the Espiritu Santo grant, referred to in the said last amended bill, embraced any part of Fort Brown reservation, and also denies that the Powers estate, or any devisees of the said Powers or the Danas, own any part of Fort Brown reservation or improvements, or own or are entitled to receive any part of the fund of $160,000, referred to in the said last amended bill.

V. This defendant, upon information and belief, denies that the Powers estate, or any devisees of the said Powers, own any part of any tract of land situated in Fort Brown reservation, or embraced in that part of the middle third of the Espiritu Santo grant which was not sold to José Miguel Paredes, or that Miguel Salinas ever owned or acquired the same, or that one Escamilla was ever the owner thereof, and also denies that the said Powers estate, or the devisees of the said Powers, own or are entitled to receive any proportionate part whatever of the fund of $160,000, referred to in the said last amended bill.

VI. This defendant, upon information and belief, denies that the estate of Stephen Powers, deceased, or his devisees, or the said Danas, own or are in any way entitled to any part of the rents or compensation for use and occupation, which have accrued upon any part of Fort Brown reservation, or which have accrued upon any part of the Salinas labor.

VII. This defendant refrains from making any answer to the allegations contained in section V of the said second amended bill, relating to the proceedings in the suit No. 1346, on the ground that he does not claim any title to the said Fort Brown reservation derived from any party to the said suit since the commencement thereof, and that this court has ruled, by its interlocutory decree of July 22, 1899, that the decree entered in the said suit No. 1346
550 is in no way binding upon this defendant; and he avers that he is not estopped or concluded in any manner by the said decree, and that he has no knowledge nor information sufficient to form a belief, as to any of the allegations contained in the said section V.

VIII. This defendant denies that he has made any pretenses contrary to the fact; and, upon information and belief, he denies that any part of Fort Brown reservation was ever in the possession of

the said José Miguel Paredes, or his heirs, assigns or grantees; and, on information and belief, he avers that the said Maria Josefa Cavazos, at the time of the seizure of the Fort Brown reservation by the United States military authorities, was the owner of the whole of such reservation and in possession thereof; and no part of such reservation was ever in the possession of the said José Miguel Paredes or his heirs or any persons claiming title adverse to her.

IX. This defendant believes it to be true that his father, Charles Stillman, at one time purchased certain ejidos or labor titles and other rights and interests in real estate in Texas, including the present site of the city of Brownsville and the Fort Brown military reservation; but he has no knowledge nor information sufficient to form a belief, as to whether any titles or interests so acquired were ever declared null and void by any appropriate tribunal of the State of Tamaulipas, or otherwise.

X. This defendant admits that on or about October 12, 1850, his father, Charles Stillman, through Basse and Hord, who represented him and his agents entered into a contract with Maria Josefa Cavazos and her husband; but he denies the allegations contained in the said second amended bill, as to the consideration, terms, character or effect of the said contract, or that at the date thereof the said Maria Josefa Cavazos owned less than one-half, or that the whole, of the said Fort Brown reservation, or that the greater portion or any part thereof was included in the said Paredes tract; and he also denies that no valid consideration was ever given for the deed of March 25, 1875, executed to the said Charles Stillman by the said Maria Josefa Cavazos; but, on the contrary, he alleges, on information and belief, that while the said deed was given partly for the consideration mentioned in the said contract of October 12, 1850, the said contract was made in settlement of various claims and differences at that time existing between Charles Stillman and
551 others and the said Maria Josefa Cavazos, and as part consideration thereof, the said Charles Stillman, at about that time, paid to the said Maria Josefa Cavazos, the sum of $33,000, in cash, and subsequently, at the request of the said Maria Josefa Cavazos, he expended large sums of money in protecting and enforcing the interests of the said Maria Josefa Cavazos and himself in the said Fort Brown reservation.

XI. This defendant believes that Exhibit D annexed to the second amended bill of complaint, is a correct copy of the agreement dated August 7, 1885, between Pedro G. Cavazos and himself, but he begs leave to produce the original thereof upon the final hearing herein, in case any error exists in the said copy; and he refers to such original for the terms and effect thereof, and to the admission therein contained that this defendant had an equal interest with the estate of the said Maria Josefa Cavazos in the said Fort Brown reservation under the said deed of March 12, 1875. This defendant denies that his claim to one-half of the Fort Brown reservation and of the fund of $160,000 appropriated to pay for the same and for the use and

occupation thereof, are not made in good faith, or are based upon pretended titles or champertous contracts or illegal instruments or agreements of any kind; and he denies that he has in his possession the original contract of October 12, 1850, above referred to.

XII. This defendant denies that he ever repudiated the whole or any part of any contract with the estate of Maria Josefa Cavazos, or that he has never permitted her estate to receive the benefit of any part of the said fund of $160,000, or that he has acted with anybody, or that anybody has acted with him in defrauding or depriving said estate of anything whatever, or that there has been any fraudulent or other conspiracy between him and the defendant Carson, or that any of his acts, or the acts of the late Charles Stillman, have been made or taken with intent to deprive any persons of their rightful rights or interests in anything whatever. This defendant avers that the said contract of August 7, 1885, between himself and the said Pedro G. Cavazos, representing the said estate of Maria Josefa Cavazos, was executed in the summer after the said appropriation was made by the Congress of the United States, and at a time when there was no reason to suppose that any adverse claims would be made against the fund, but that it would speedily be paid without objection on the part of the Government to this defendant and the said Pedro G. Cavazos, as executor. This defendant was ready and willing to perform the
552 said contract and actually executed and delivered to Hector de Castro, substituted as trustee for Pauline Echeverria, therein mentioned, the deed of his interest in the said Fort Brown reservation, in which the said Pedro G. Cavazos, as executor, united, and that the same was subsequently tendered to the United States Government by the said Hector de Castro, but was not accepted, on the ground that various claims to the said fund had been filed with the Government by other persons, including this complainant; and it was on account of such unfounded claims, and also because the complainant refused to allow the proceeds to be collected and deposited in a bank in Washington for arbitration, that such great delay and expense subsequently resulted in the collection of the said appropriation; and soon afterwards, during the year 1886, the said Pedro G. Cavazos was duly removed, as trustee under the will of the said Maria Josefa Cavazos, by the district court of Cameron county, Texas, and the defendant Thomas Carson, as administrator with the will annexed of the said estate, was duly appointed in the place of the said Pedro G. Cavazos, and thereafter duly qualified; and it became utterly impossible for this defendant to perform the said contract of August 7, 1885, with a person who had ceased to represent the estate, and after the conditions upon which the said contract had been entered into had entirely changed; and that this defendant avers that had he attempted subsequently to carry out the terms of the said contract of August 7, 1885, it would have been in violation of the arbitration agreement of July 13, 1887, a copy of which is annexed to the original bill of complaint herein as Exhibit D, upon

which the complainant bases this suit, and to which the defendant Thomas Carson, as administrator of the estate of Maria Josefa Cavazos with the will annexed, was a party; and the right of the said Carson to represent the said estate in place of the said Pedro G. Cavazos, at the time the said arbitration agreement was executed, is not only admitted but is affirmatively alleged by the complainant in section VIII of his original bill herein.

XIII. This defendant denies that he has never permitted the estate of Maria Josefa Cavazos to receive any part of the fund of $160,000; and he avers that he has always been ready and anxious to have a full and complete accounting with the said estate as to the said fund, and that this has been prevented heretofore only by the fact that the complainants and others unjustly, and without
553 any foundation in fact or in law, have made vexatious claims against the fund, which the complainant has not even been able to allege with any consistency in his pleadings; for in his original bill, he alleged that, as executor of the estate of Stephen Powers, he was entitled to one-half the entire fund, or $80,000, thus disregarding disbursements which he knew were a proper charge against the fund; and in the first amended bill, he brought in the devisees of Stephen Powers as necessary parties having an interest in the fund, and admitted, in section 4 thereof, that the taxes, amounting to $8,101.02, had been properly paid out of the fund, though he claimed, in section 5 thereof, that the Powers estate was entitled to one-half of the entire $160,000, and thereafter, in the same section, he admitted that the estate and the devisees of the said Stephen Powers were entitled to only five-eighths of one-half, the defendant, Marie Grogan Dana, being entitled to three-eighths thereof; while thereafter, in section 7, of the same amended bill, he again claimed that the Powers estate was entitled to one-half of the entire fund of $160,000.

This defendant is informed and believes that the only reason why the defendant Carson gave a power of attorney to collect the said appropriation is that, after having spent nearly two years in Washington in an ineffectual effort to collect the same, and the payment having been delayed for many years, and there being no certainty that it would ever be made, the said Carson would manifestly not have been justified in taking up a permanent residence in Washington, merely in the expectation of some day being able to collect the said fund personally.

XIV. This defendant denies that there was, or ever has been, any conspiracy, fraudulent, or otherwise, between him and the defendant Carson on any subject whatever, or that any payments made by him constituted any repudiation of the contract of August 7, 1885, or of any other contract. On the contrary, he avers that, subsequent to the execution of the said contract of August 7, 1885, and after the inability of the said Pedro G. Cavazos to perform the same, and the refusal of the United States Government to accept the deed tendered under it, and after it had been superseded by the

arbitration agreement of July 13, 1887, this defendant incurred very heavy expenses, as alleged in his answer to the original bill and amended bill, which were necessarily made by him in the effort to collect the said appropriation; and he denies that any disbursements made by him or his father were made pursuant
554 to any champ*e*rtous contract or instrument, or in prosecution of any conspiracy, or with intent to deprive the estate of Stephen Powers, or any one else, of any lawful right or claim, or that he was restrained by any instrument from making any such expenditures.

XV. This defendant denies that he makes any pretent*i*ons contrary to the truth, with reference to the judgment of condemnation entered in the district court of Cameron county, on or about February 20, 1879, or as to the effect of such judgment; and he leaves it to this court to determine the legal effect of such judgment and the proceedings upon which the same were based.

XVI. And this defendant answers the interrogatories contained in the said second amended bill of complaint herein, which he is thereby required to answer under oath:

I. Referring to the first interrogatory, this defendant submits that it is not addressed to him, and needs no answer from him; and he has been expressly excused by this court from answering the same.

II. Answering the second interrogatory, this defendant says:—

1. This defendant has not in his possession or under his control the original of the agreement dated October 12, 1850, between Dr. Raphael Garcia Cavazos and Maria Josefa Cavazos, of the one part, and Basse and Hord, representing the said Charles Stillman, of the other part; and he does not know who has the original of such paper, nor whether it was ever recorded; but he has an instrument in his possession which he is informed and believes is a copy of such original.

2. The original deed of March 25, 1875, made by Maria Josefa Cavazos to Charles Stillman, is in the possession or under the control of this defendant, and as he is informed and believes, the said deed was duly recorded in Cameron county, Texas, in Book F, page 676, supplemental records of real estate.

3. The original agreement, made August 7, 1885, between Pedro G. Cavazos and this defendant, is in the possession or under the control of this defendant, and this defendant believes that "Exhibit D" annexed to the second amended bill of complaint is a correct copy thereof, though, for the sake of greater accuracy, he begs leave to refer to the original. This defendant is informed and believes that the said agreement was not recorded anywhere, because it was not an instrument which required to be recorded.

555 III. Answering the third interrogatory, this defendant says that no deed was made to him by Maria Josefa Cavazos on March 25, 1875, or at any other time; and that the only deed made by her was made to the late Charles Stillman, deceased. This defendant is informed and believes that the said Charles Stillman paid

the said Maria Josefa Cavazos a large sum of money, in consideration of the said deed; but he does not know how much, nor when nor where, nor what was the entire consideration of said deed; and he respectfully submits that the whole of this interrogatory is entirely immaterial and irrelevant, inasmuch as the consideration for any deed to Charles Stillman, deceased, is a matter entirely immaterial to the complainant's claim in this suit.

IV. Answering to the fourth interrogatory, this defendant says that he has paid to or for account of the estate of José Maria Cavazos more than one-half of the $160,000 collected for Fort Brown reservation, in the manner described in this defendant's former answer.

V. Answering the fifth interrogatory, this defendant says that he has not repudiated any obligation of his, contained in the agreement of August 7, 1885, referred to in the said last amended bill; that it became impossible to carry out the said agreement by reason of the fact that the United States Government declined to accept the deed thereunder; that Pedro G. Cavazos never performed the said agreement on his part and was duly superseded as executor of the estate of Maria Josefa Cavazos, by the defendant Carson, who was duly appointed administrator thereof with the will annexed, and who subsequently, as such administrator, became a party to the said arbitration agreement of July 13, 1887, which the complainants contend is binding upon this defendant. That this defendant does not claim that the estate of Maria Josefa Cavazos is entitled to receive no part of the Fort Brown fund, but he does claim that the said estate has already received a full half of the said fund. As to the acts of the defendant Carson, this defendant leaves him to answer for himself; but this defendant says that it has never been his purpose, and, therefore, could not have been the purpose of this defendant and the defendant Carson, to defeat the claim of the estate of Maria Josefa Cavazos to a part of the said Fort Brown fund; but it is the purpose of this defendant to defeat the claims of all other persons and estates to any part of the said fund, because this defendant believes
556 that no other persons or estates than himself and the said estate of Maria Josefa Cavazos are entitled to any portion thereof.

XVII. By way of further answer to the amended bills herein, this defendant suggests that the said bills are defective for want of parties, by reason of the omission therefrom of the heirs of Matt Gerhard, who was named as defendant in the original bill, and who, as this defendant is informed and believes, is now deceased; and that the said bills are further defective by reason of the omission therefrom of the heirs of Leocardio Salinas, Antonio Salinas, Melchior Salinas and Alejandro Salinas, who were named as defendants in the original bill, and who, as this defendant is informed and believes, are now deceased.

JAS. STILLMAN.

——— ———,

Solicitors, under Limited Appearance,
for James Stillman.

557 STATE OF NEW YORK,
Southern District of New York, } ss :
County of New York,

Personally appeared before me, Cornelius A. Loughlin, a notary public in and for the said county, district and State, duly commissioned, qualified and acting, James Stillman, one of the defendants named in the foregoing answer, who, after being by me duly sworn, stated on his oath, that he is one of the defendants named in the said answer; that he has read the same and is advised of the contents thereof, and that the allegations therein contained which refer to his own acts, are true, and those which refer to the acts of others he believes to be true.

JAS. STILLMAN.

Sworn to and subscribed before me, this 29th day of January, 1902.

[L. S.] CORNELIUS A. LOUGHLIN,
Notary Public, New York County.

(Endorsed:) Circuit court of the United States, for the western district of Texas. C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, and others,—complainants,—against James Stillman, impleaded with Thomas Carson and others,—defendants. In equity. No. 21.—Answer of James Stillman to second amended bill. Farrar, Jonas and Kruttschnitt, solicitors, under limited appearance, for James Stillman.—Filed February 5, 1902. D. H. Hart, clerk. (171)

558 Circuit Court of the United States for the Western District of Texas, Brownsville Division.

C. B. COMBE, Executor Estate of Stephen Powers, Dec'd, *et al.*,
vs.
JAMES STILLMAN, THOMAS CARSON, ET AL. } No. 21. In Equity.

The *jiont* and seceral answer of defendants Thomas Carson, administrator of the estate of Maria Josefa Cavazos, dec'd, and of Thomas Carson individually, to complainant's 2d. amended bill of complaint.

I.

Said defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors and inssufficiencies in the complainant's said bill of complaint contained, and specially reserving

and insisting upon their pleas to the jurisdiction and their pleas in abatement herein and their demurrers and exceptions, for answer hereunto or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, answer and say:

II.

Defendants re-affirm all of their allegations contained in their former answer filed herein, except as, said allegations may be qualified herein. And defendants intend that their former answer, together with this answer shall be considered as one answer and one pleading.

III.

1. Defendants upon information and belief admit that the allegations contained in paragraphs 1 and 2 of section 4 of complainant's second amended bill are true; except upon information and belief, they deny the allegations that surveys of dividing lines of the middle third of the Espiritu Santo grant were not made at the time of partition mentioned in paragraph 2 of said section, and that the boundaries and dividing lines of said thirds of said grant were not settled and ascertained at that time, and that said boundaries and dividing lines of said thirds were not then or at any time
559 afterwards made or ascertained except as afterwards set out and alleged in complainant's second amended bill.

2. Defendants, upon information and belief admit that the allegations contained in paragraph 3 of section 4 of complainant's 2d. amended bill vesting title in Francisca Cavazos to the middle third are true; but say that they have no knowledge or belief as to whether the said Francesca Cavazos conveyed to Jose Miguel Paredes title to ten (10) sitios or square leagues of the eastern part of said middle third, or whether the said Stephen Powers, the said Marie Grogan Dana, and Charles S. Dana at any time acquired the said eastern part of said middle third by a regular chain of title from the said Jose Mi*h*uel Paredes, or became the owners thereof in fee simple, five eighths to Powers and his devisees and three eighths to the Danas *ar* as to whether said parties are now seized and possessed of said estate, or that the boundaries and dividing lines of said tract *was* not fixed or ascertained except as afterwards set out in complainant's 2d. amended bill; but deny that the Powers estate and devisees and the said Dana and wife are vested with title, ownership and possession of the said tract as alleged.

3. Defendants upon information and belief deny that the said Paredes tract embraces any portion of the Fort Brown reservation or that the Powers estate and his devisees or the said Danas own or are entitled to receive any part of the fund of $16.000.00, or that the Powers estate and his devisees have ever acquired any right, title or interest in and to any part of the Fort Brown, reservation, or that Miguel Salinas ever owned or acq*i*ored title to twenty two and one

half acres claimed to be situated within the Fort Brown reservation in complainant's 2d. amended bill, of that Jesus S. Camilla ever owned said twenty two and one half acres or that Francisca Cavazos ever conveyed her fee simple title to same to the said Jesus S. Camilla or that the said Powers estate and his devisees ever acquired any title to same or that they were entitled to any portion to the said $160.000.00 by reason of their assertion of title to a portion of the Salinas labor or because of any other claim of title or right.

560 4. Defendants upon information and belief deny that the Powers estate and his divisees and the said Danas own any part of the said Fort Brown reservation or that they own or are entitled to receive any part of the said rent and compensation for the use and occupation of the Fort Brown reservation because of their assertion of right to same through titles claimed either to the Paredes tract or to the Salinas labor; or because of any other claim of title or right.

IV.

Defendants, upon information and belief, admit that so much of paragraph 1 of section 5 of complainant's second amended bill charging matters of record as existing in cause No. 1346—district court of Cameron county Texas, is true; but deny that the sole purpose of said suit was to fix and determine the boundary lines of the eastern, middle and western thirds of the Espiritu Santo grant according to the partition as agreed upon by the three heirs of Jose Salvador de la Garzam or to survey ascertain and settle the dividing line of thirds according to the rights of them, present owners; or that it was specially the object and purpose of said suit to survey, ascertain and settle the dividing line between the said Paredes tract and that of Maria Josefa Cavazos.

And defendants, upon information and belief deny that the said decree fixed the true dividing line between the Paredes tract and the Maria Josefa Cavazos tract, since it appears from the records in said cause that the said Paredes tract as partitioned therein embraces forty-six thousand one hundred and three acres of land, when according to the claim of this complainant said Paredes tract contains less than forty-four thousand acres.

Defendants deny that in and by said decree it was adjudged that the Paredes tract embraced any part or portion of the Fort Brown reservation or was an adjudication of title to any lands situated within the limits of said reservation.

2. Defendants specifically deny that they co-operated with defendant Stillman or with any one else in any effort, or made any effort themselves, to have the boundary lines of the Paredes tract surveyed and established by a decree in said suit No. 1346,

561 in such a manner as to unlawfully deprive the owners of the Paredes tract of a large portion thereof, or to obtain such portion for the estate of Maria Josefa Cavazos, or to prevent the lines of the Paredes from being correctly established, so as to ex-

clude the Fort Brown reservation from said tract, but say that it is true that by the said decree the Paredes tract was declared to contain an acreage largely in excess of its actual quantity. And defendants say that if a charge of intended unlawful deprivation of land by any of the parties to said suit No. 1346 be warranted, the record in said suit offers substantial basis for such a charge against the parties in that suit who were claiming to own the Paredes tract.

3. Defendants deny that the certain extract from said decree set forth in paragraph 2 of section 5 of complainant's second amended bill, wherein it is declared that the title to Fort — reservation is not adjudicated in said decree and that the lines, surveys, boundaries, pleadings, nor the decree itself are to constitute an estoppel or to be used in evidence for or against claimants to said Fort Brown reservation, was inserted by the procurement of these defendants or that of others acting with them without the knowledge or consent of complainant; but defendants say that the extract in question constituted and formed a part of the decree rendered in said cause No. 1346, and, upon information and belief, say that complainant had full knowledge of the contents thereof and acquiesced therein. Defendants, upon information and belief deny that said survey was made in accordance with the outside boundary line of said grant as fixed by the supreme courts of the United States and Texas, or in accordance with the laws of Texas, or in accordance with the prayer to the application for survey which prayer is believed to be correctly copied and quoted in complainant's 2d. amended bill. And defendants, upon information and belief, charge as heretofore charged that the true boundary line between the Paredes and the Maria Josefa Cavazos tracts lies far east of the Fort Brown reservation. And defendants deny that they are bound or estopped by the said
562 decree in said suit No. 1346, in any matter touching the title to the Fort Brown reservation or right to the said fund of $160,000.00 under the very terms of said decree and under the rulings and order of this court of July 22, 1899.

V.

1. Defendants deny that they have made any pretenses contrary to the fact as alleged in paragraph 1 section 6 of complainant's 2d. amended bill and say that said alleged pretenses are true.

2. Defendants, upon information and belief, deny that any portion of the Fort Brown reservation was included within the limits of the Paredes tract, or that the said Paredes, heirs, assigns and grantees, were ever in possession of any part of said reservation at the time of the occupancy by the United States Government or at any other time.

3. Defendants are informed and believe that a part of the time from the year 1826 down to the seizure by the Army of the United States a portion of the Fort Brown reservation was in possession of persons claiming title through the city of Matamoras but that

Maria Josefa Cavazos never parted with her fee simple to any part of the Fort Brown reservation to any of such persons, that her fee simple title to the said middle third has been declared superior to the said "labor" title by the Supreme Court of the United States.

4. Defendants believe that Charles Stillman purchased certain labor titles after the military occupancy of the present reservation and believe said title approximately covered the present site of the city of Brownsville as well as a part or perhaps all of the Fort Brown reservation, but assert that the court of Mexico and the Supreme Court of the United States have declared *that* the Cavazos title to be superior to the said labor title.

5. Defendants, upon information and belief, admit that Charles Stillman acting through Basse and Hord, his agents and attorneys did on October, 12th, 1850, enter into a contract with Dn. Rafael Garcia Cavazos and Maria Josefa Cavazos, but do not believe that the allegation- made by complainant as to the consideration, terms or effect of said contract are true. Defendants, upon information and belief, deny that at thei time of such contract Maria
563 Josefa Cavazos was not the owner of all of the said Fort Brown reservati-n, or that the greater or any part of said reservation was then or ever owned by the owners of the Paredes or embraced within its limits and do not believe that said contract was champertous or covinous. Defendants believe that the deed of March, 25th, 1875, from Maria Josefa Cavazos to Charles Stillman was made partly in accordance with the plan of settlement proposed in the contract of 1850, but are informed and believe that many matters of mutual account and difference had arisen between the then parties and their assigns during the intervening time, and defendants have always understood and believed that Charles Stillman paid Maria Josefa Cavazos $33,000.00, and agreed to defend the Cavazos title to the Fort Brown reservation and prosecute their joint claim against the Government of the United States for its use and occupation, in consideration of which Maria Josefa Cavazos conveyed to him all of her interest in the town tract besides one half of the Fort Brown reservation. A mutual settlement and adjustment of matters of account and differences also forming a part of said consideration, as well as a mutual engagement on the part of each to stand their one half share of expenses incurred in defending the Cavazos title to the Fort Brown reservation.

6. Defendants believe that the defendant James Stillman and one Pedro D. Cavazos did on August 7th, 1885 enter into a contract, a copy of which is attached to complainant's 2d. amended bill, marked Exhibit (D) which said defendants believe to be substantially correct, but defendants say that as to its terms and effect the contract itself speaks. Defendants deny that the said Pedro G. Cavazos was ever legally authorized or empowered to enter into such a contract and did not then represent the estate of Maria Josefa Cavazos, and the same was not the contract of said estate. Defendants further believe that the claim of defendant Stillman that he acquired title

to one half of the Fort Brown reservation and is entitled *and is entitled* to one half of the fund of $160,000 is made in good faith upon legal titles, deeds, contracts, and agreements, supported by valuable and adequate consideration.

564 7. Defendants deny that the said contract, Exhibit "D" was ever the contract of the estate of Maria Josefa Cavazos, but admit that it is true that the estate of Maria Josefa Cavazos has never received any part of the said $160,000.00, unless the sum of $8,101.02, received through Shearman and Sterling of New York, to pay delinquent taxes in order to make clear title to the Government was a part of said amount. Defendants deny that they ever intended to defraud complainants, the estate of Maria Josefa Cavazos, or any one else of any portion of said fund, and deny that they have acted with defendant Stillman or any one else with such fraudulent intent or endeavor. Defendants admit that it is true that one Garver collected from the United States the said $160,000.00 acting under authority from defendant administrator, but that such authority was given and executed in good faith by defendant administrator, as particularly set forth in his answer hereto filed herein, and not with any intent to defraud the estate he represents or any one else.

8. Defendants deny that any fraudulent conspiracy exists or ever existed between themselves and defendant Stillman to deprive all or any of the owners of their interest in said fund. Defendants do not admit that all the disbursements claimed to have been made by defendant Stillman are charg-able against the said fund of $160,000.00, but defendants believe that about $60,000.00 of same should be so charged, though the defendants believe that said disbursements were made by the said Stillman as alleged in his answer heretofore filed herein, in good faith and not pursuant to any conspiracy to defraud any one nor in accordance with any champertous contracts or deeds.

VI.

Defendants deny that they have made any pretenses contrary to the truth as alleged in section 7 of complainant's 2d amended bill, concerning the judgment of condemnation in the district court of Cameron county Texas of February, 1879, or as to the legal effect of same; but submit same for the determination of the court.

565

VIII.

Defendants answering the interrogatories propounded in complainants' 2nd. amended bill, except the first interrogatory, they being excused from answering same, under oath as required say:

Answering the second interrogatory defendants say, that they have never seen the original of the agreement of date October, 12th, 1850, between Don Rafael G. Cavazos a-d Maria Josefa Cavazos, of the 1 part and Basse and Hord, representing Charles Stillman, of

the other part, and do not know who has the original, but they have what purports to be a copy thereof. (2.) The deed of March 21st, 1875 made by Maria J. Cavazos to Charles Stillman is recorded in Bük F, page 676 supplemental records of real estate of Cameron county, Texas; the original of this deed we believe to be in the possession of James Stillman of New York. (3.) Have never seen the original agreement made August, 7th, 1885 between Pedro G. Cavazos and James Stillman, thereofre cannot say whether Exhibit "D" is a correct copy of the original or not. Neither this nor the first mentioned agreement (October, 12th, 1850) is recorded in Cameron county Texas, we do not know why they were not recorded.

3rd. interrogatory. We do not personally know that the defendant James Stillman ever paid to Maria J. Cavazos or her heirs or estate any cash or money, or property or other valuable thing, as and for consideration of the deed of March, 25th, 1875, which was made to Charles Stillman. The true consideration for the said deed was believed to have been the adjustment of controversies existing between the said Charles Stillman and the said Maria J. Cavazos, and the payment of large sums of money to or for the benefit of the said Maria J. Cavazos.

4th. interrogatory. The defendant, James Stillman has not paid directly to defendant Thomas Carson, individually, or to him as administrator of the estate of Maria Josefa Cavazos any part of the $160,000.00 collected by him for the Fort Brown reservation, except the — of $8,101.02 through Sherman and Sterling, of New York, to pay taxes in order to make clear title to the United States for the Ft. Brown property, though the said defendant claims to have
566 made large payments in collecting the said sum of $160,000.00, for one half of which the said estate is charg-able.

We had no knowledge of the agreement of August, 7th, 1885 until the present time and have no knowledge whether the defendant James Stillman ever *pre*-udiated his obligation under the said agreement or not; though we are advosed and believe Pedro G. Cavazos at no time represented the estate of Maria Josefa Cavazos and further that it was impossible for said Stillman to execute it because the Government refused to accept the deed tendered thereunder, and that it was superseded by the arbitration agreement of July, 13, 1897 upon which the complainants rely in the present suit.

The defendant James Stillman has never claimed to us that the estate of Maria Josefa Cavazos is not entitled to any part of the said fund of $160,000.00 and hence we could not have acquiesced in any such act of claim of said Stillman.

We visited New York in December, 1895 and January, 1896 and together with counsel tried and made every possible effort to effect a settlement of said matter, but owing to litigation brought by H. E. Woodhouse and others for this fund, no adjustment thereof could be effected, pending litigation.

We have no understanding or agreement with defendant Stillman to defeat the claims of the estate of Maria Josefa Cavazos, or any

other persons claiming any part of said fund, on the contrary we have always and now do claim for the estate of Maria J. Cavazos all of said fund that may be due the said estate of Maria J. Cavazos, of and from said defendant Stillman.

THOMAS CARSON,
Administrator of Estate of Maria Josefa Cavazos, Dec'd, and for Himself as an Individual.
DENMAN, FRANKLIN & McGOWN,
DUVAL WEST,
Solicitors for said Defendants, Thomas Carson, Administrator of the Estate of Maria Josefa Cavazos, and Thomas Carson Individually.

567 STATE OF TEXAS, }
County of Cameron. }

Before me E. H. Goodrich, a notary public, in and for Cameron county Texas, personally appeared, Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, and in his individual capacity, who, being by me duly sworn upon his oath states that in his capacity of administrator of the estate of Maria Josefa Cavazos and individually he is named — the foregoing and attached answer as "defendants, that he has read the same and is advised of the contents thereof; that the allegations therein made which refer to his own acts are true and those other allegations, made upon information and belief as to the acts of others he believes to be true.

THOMAS CARSON.

Sworn to and subscribed before me this 31st, day of January, A. D. 1902.

[SEAL.] E. H. GOODRICH,
Notary Public, Cameron County, Texas.

Endorsed: No. 21. In equity. United States circuit court, western district of Texas, Brownsville division. C. B. Combe, ex'r *et al. vs.* James Stillman, *et al.* Answer of defendant administrator, etc., and Thomas Carson individually to complainants' 2d amended bill. Filed Feb. 3d, 1902. D. H. Hart, clerk, by Benj. Kowalski, deputy.

568 *Subpœna in Chancery for Mrs. Mary B. Woodhouse in Her Own Right.*

No. 21. In Equity.

Subpœna in Chancery.

The President of the United States to Mrs. Mary B. Woodhouse (in her own right), Greeting:

You are hereby commanded that laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court, for the western, district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in January, 1902, then and there to appear and answer the exigency of a certain bill of revivor of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, *et al*, plaintiffs, exhibited and filed in the office of said court on the 9th day of March, 1901, against James Stillman and Thomas Carson, administrator with the will annexed, of Maria Josefa Cavazos, deceased, *et al.*, and against the following named persons towit: Lilian Mary Hicks, administratrix of the estate of Mrs. Annette P. Hicks, deceased, and Mrs. Mary B. Woodhouse, independent executrix of the last will and testament of H. E. Woodhouse, deceased, late of Cameron county, Texas, and also in her own right, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court hereunto affixed, at Brownsville, Texas, this the 2nd day of December, A. D. 1901.

D. H. HART,
Clerk of said Circuit Court.

The defendant Mrs. Mary B. Woodhouse, (in her own right), is required to enter her appearance in the above suit on or before the first Monday in January, 1902, and show cause, if any she
569 has, why the cause should not be revived; otherwise the suit shall stand revived as of course.

D. H. HART, *Clerk.*

(Endorsed:) No. 21. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, executor, *et al. vs.* James Stillman, *et al.* Subpœna in chancery issued December 2, 1901, returnable January 6th, 1902. D. H. Hart, clerk. Original, for Mrs. Mary B. Woodhouse, in her own right. Cameron county. Filed December 2, 1901. D. H. Hart, clerk.

Marshal's Return.

Received in this office this 2nd day of December A. D. 1901, and executed on the 2nd day of December A. D. 1901 by delivering to the within named defendant, Mrs. Mary B. Woodhouse, in her own right, in person, a true copy of this subpœna.

GEO. S. SEIBRECHT,
U. S. Marshal,
By JOHN HAYNES, *Deputy.*

570 *Subpœna in Chancery for Mrs. Mary B. Woodhouse, Executrix, etc.*

No. 21. In Equity.

Subpœna in Chancery.

The President of the United States to Mrs. Mary B. Woodhouse, independent executrix of the last will and testament of H. E. Woodhouse, deceased, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in January, 1902, then and there to appear and answer the exigency of a certain bill of revivor of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, *et al.*, plaintiffs, exhibited and filed in the office of said court on the 9th day of March, 1901, against James Stillman and Thomas Carson, administrator with the will annexed of Maria Josefa Cavazos, deceased, *et al.*, and against the following named persons, to wit: Lilian Mary Hicks, administratrix of the estate of Mrs. Annette P. Hicks, deceased, and Mrs. Mary B. Woodhouse, independent executrix of the last will and testament of H. E. Woodhouse, deceased, late of Cameron county, Texas, and also in her own right, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court hereunto [SEAL.] affixed, at Brownsville, Texas, this the 2nd day of December, A. D. 1901.

D. H. HART,
Clerk of said Circuit Court.

571 The defendant Mrs. Mary B. Woodhouse independent executrix of the last will and testament of H. E. Woodhouse, deceased, is required to enter her appearance in the above suit on or before the first Monday in January, 1902, and show cause if any she has, why the cause should not be revived; otherwise the suit shall stand revived as of course.

D. H. HART, *Clerk.*

Endorsed: No. 21. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, ex'r, *et al. vs.* James Stillman, *et al.* Subpœna in chancery issued Dec. 2, 1901, returnable Jan'y 6, 1902. D. H. Hart, clerk. Original. Mrs. Mary B. Woodhouse, executrix, etc. Cameron county. Filed Dec'r 2, 1901. D. H. Hart, clerk.

Marshal's Return.

Received in this office this 2nd day of December, A. D. 1901, and executed on the 2nd day of December, A. D. 1901, by delivering to the within named defendant Mrs. Mary B. Woodhouse, executrix, in person, a true copy of this subpœna.

GEO. L. SIEBRECHT,
U. S. Marshal,
By JOHN M. HAYNES, *Deputy.*

572 *Subpœna for Lilian Mary Hicks, Administratrix.*

No. 21. In Equity.

Subpœna in Chancery.

The President of the United States to Lillian Mary Hicks, administratrix of the estate of Mrs. Annette P. Hicks, deceased, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in January, A. D. 1902, then and there to appear and answer the exigency of a certain bill of revivor of C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, *et al.* plaintiffs, *vs.* James Stillman and Thomas Carson, administrator with the will annexed of Maria Josefa Cavazos, deceased, *et al.*, and against the following named persons, towit: Lilian Mary Hicks, administratrix of the estate of Mrs. Annette P. Hicks, deceased, and Mrs. Mary B. Woodhouse, independent executrix of the last will and testament of H. E. Woodhouse, deceased, late of Cameron county, Texas, and also in her own right, exhibited and filed in the office of said court on the 9th day of March, 1901, and to do further and re-

ceive what shall then and there be considered in that behalf, and this you are not to omit, under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court hereunto [SEAL.] affixed, at Brownsville, Texas, this the 2nd day of December, A. D. 1901.

D. H. HART,
Clerk of said Circuit Court.

573 The defendant Lilian Mary Hicks, administratrix, is required to enter her appearance in the above suit on or before the 1st Monday in January, 1902, and show cause, if any she has, why the cause should not be revived; otherwise the suit shall stand revived, as of course.

D. H. HART, *Clerk.*

Endorsed: No. 21. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, executor *et al.*, *vs.* James Stillman, *et al.* Subpœna in chancery issued December 2, 1902, returnable January 6th, 1902. D. H. Hart, clerk. Original for Lilian Mary Hicks, administratrix, Cameron county. Filed December 2nd 1901. D. H. Hart, clerk.

Marshal's Return.

Received in this office second day of December, A. D. 1901, executed on the —th day of December, 1901, by delivering to the within named defendant Mrs. Lilian Mark Hicks, in person, a copy of this subpœna.

GEO. L. SIEBRECHT,
U. S. Marshal,
By JOHN M. HAYNES, *Deputy.*

574 *Subpœna in Chancery for Frances E. Landrum.*

No. 21.

Subpœna in Chancery.

The President of the United States to Frances E. Landrum, Greeting:

You are hereby commanded that, laying all matters aside, you cause an appearance to be entered for you before the honorable the United States circuit court, for the western district of Texas, at Brownsville, in chancery sitting, on or before the first Monday in January, A. D. 1902, then and there to appear and answer the exigency of a certain amended bill of complaint of C. B. Combe, inde-

pendent executor of the last will and testament of Stephen Powers, deceased, Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph K. Combe, and Emile P. Combe, exhibited and filed in the office of said court on the 29th day of October, 1898, against James Stillman, Thomas Carson, as administrator with the will annexed of Maria Josefa Cavazos, deceased and in his own right, Francisco Yturria, H. E. Woodhouse, Henry Miller, Charlotte Miller, Charles S. Dana, Marie Grogan Dana, Frances E. Landrum, Annette P. Hicks, Agnes Anastacia Browne, Bernardo Salinas, Jose Maria Salinas, Felicita Salinas, Andrea Salinas, Juan Salinas, Vicente Salinas, and R. D. Hinojosa, and to do further and receive what shall then and there be considered in that behalf, and this you are not to omit under the penalty of two hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court hereunto affixed at Brownsville, this 2nd day of December, 1901.

[SEAL.]

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.

The defendant, Frances E. Landrum is required to enter her appearance in the above suit on or before the first Monday in January, 1902, otherwise the bill of complaint filed against *him* will
575 be taken *pro confesso*.

[SEAL.]

D. H. HART, *Clerk.*

Endorsed: No. 21. United States circuit court, western district of Texas, at Brownsville. C. B. Combe, ex'r, *et al. vs.* James Stillman, *et al.* Subpœna in chancery issued December 2, 1901, returnable January 6, 1902. D. H. Hart, clerk. Original. Frances E. Landrum. Cameron county. Filed December 13, 1901. D. H. Hart, clerk.

Marshal's Return.

Received in this office this second day of December, 1901, and executed on the 13th day of December, 1901, by delivering to the within named defendant Mrs. Frances E. Landrum, in person, a true copy of this subpœna.

GEO. L. SIBERECHT,
U. S. Marshal,
By JOHN M. HAYNES, *Deputy.*

Service	$2.00.
Mileage	1.20.
Actual expenses	$3.20

576 *Order Reviving Suit against Mrs. Mary B. Woodhouse, Independent Executrix of Defendant H. E. Woodhouse, Deceased.*

C. B. COMBE, Ex'r, ET AL.
v.
JAS. STILLMAN ET AL. } # 21. In Equity.

Be it remembered that at rules on the first Monday in March, 1902, the same being the 3rd day of March, 1902:

It appearing that Mary B. Woodhouse, deceased, sole executrix of the defendant H. E. Woodhouse, deceased, was duly served with a *subpœna ad revivendum*, more than fourteen days prior to the first Monday in January, 1902, and that on Jan'y 6, 1902, she appeared in this cause, and showed no cause against revivor, but on the contrary filed her answer to plaintiffs' bill of complaint, and to the bill of revivor, in which she expressly admits that she is the independent executrix of defendant H. E. Woodhouse, deceased, and alleging that she, in her own right and as the executrix and devisee and legatee of said decedent, is the lawful owner of and entitled to all the rights of said decedent in the subject matter of this suit:

It is, therefore, upon motion of plaintiffs' counsel, ordered that this cause be and it is hereby revived against the — Mary B. Woodhouse, independent executrix of the defendant H. E. Woodhouse, deceased, and that it do proceed accordingly.

Ordered at rules, March 3, 1902.

(No signature)

Endorsed: No. 21 Equity. C. B. Combe, executor, *et al. vs.* James Stillman and Thomas Carson. Order reviving suit against Mary B. Woodhouse, independent executrix of defendant H. E. Woodhouse, deceased. Filed and entered Monday, March 3rd, A. D. 1902. D. H. Hart, clerk?

577 *Replication of Plaintiffs to Answer of Defendants Stillman and Thomas Carson and Mary B. Woodhouse.*

In the Circuit Court of the United States, Western District of Texas, Brownsville Division.

C. B. COMBE, Ex'r, ET AL.
vs.
JAS. STILLMAN ET AL. } No. 21. In Equity.

The replication of all the said plaintiffs to the answers of the defendants James Stillman, Thos. Carson, in his own right and as administrator of Maria Josefa Cavazos, and Mary B. Woodhouse, executrix of H. E. Woodhouse, deceased.

These repliants saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiency of

said answers for replication thereunto say: That they will aver and prove their said bill and amendments to be true, certain and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, *uncertain*, untrue and insufficient to be replied unto by these repliants, without this: that any other matter or thing whatsoever in said answers material or effectual to be replied unto, confessed and avoided, traversed or denied is true: all which matters and things these repliants are, and will be, ready to aver and prove as this honorable court shall direct and humbly pray as in and by their said bill they have already prayed.

C. L. BATES,
Counsel for All the Plaintiffs.

Endorsed: No. 21 In equity. C. B. Combe, ex'r, *et al.*, *v.* Jas. Stillman, *et al.* Replication of plaintiffs to answer of defend-
578 ants Stillman and Thomas Carson and Mary B. Woodhouse. Filed this 18 day of March, 1902. D. H. Hart, clerk.

579 *Order Setting down Demurrers for Argument.*

U. S. Cir. Court, Brownsville, Texas.

C. B. COMBE, EX'R, ET AL. *v.* JAS. STILLMAN ET AL. } No. 21. In Equity.

On motion of plaintiffs' counsel, it is ordered that the demurrers of defendants Stillman and Carson, to plaintiffs' second amended bill be, and they are hereby set down for argument at Austin on first Monday in July, 1899.

Ordered this June 25, 1899.

(No signature)

Endorsed: U. S. cir. c'rt, Brownsville, Texas. No. 21. In equity. C. B. Combe, ex'r, *v.* Jas. Stillman, *et al.* Order setting down demurrers for argument. Filed June 29/99. D. H. Hart, cl'k, by C. F. Tighlman, d'y.

580 *Order Overruling Demurrers and Exceptions of Plaintiffs to Amended Petition of Intervention Filed by Rafaela M. de Garcia Cavazos et al.*

C. B. COMBE, EX'R, ET AL. *vs.* JAS. STILLMAN ET AL. } No. 21. In Equity.

Intervention of Rafaela M. de Cavazos *et al.*

Be it remembered that at chambers in the city of San Antonio, Texas, on May 15, 1902, came on to be heard the demurrers and ex-

ceptions of the plaintiffs to the amended petition of intervention of said intervenors, and the court being advised of all questions of law arising thereon, doth overrule said demurrer and exceptions. It is further ordered, adjudged and decreed that this order be duly entered upon the order book as of the court the Brownsville division.

Ordered, adjudged and decreed at chambers in the city of San Antonio, Texas, May 15, 1902.

T. S. MAXEY, *Judge.*

Endorsed: No. 21 Equity. C. B. Combe, executor, *et al.*, *vs.* James Stillman, *et al.* Order overruling demurrers and exceptions of plaintiffs to amended petition of intervention filed by Rafaela M. de Garcia Cavazos, *et al.* Filed May 15, 1902. D. H. Hart, clerk. Entered at Brownsville, May 19, 1902.

581 *Orders Overruling Demurrers of Defendants Stillman and Carson to Petition of Intervention of Rafaela M. de Garcia Cavazos et al.*

In the Circuit Court of the United States in and for the Western District of Texas, Brownsville Division.

C. B. COMBE, Independent Executor, ET AL.
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

The intervention of Rafaela M. de Garcia Cavazos *et al.*

Be it remembered: That at chambers in the city of San Antonio, Texas, on this the 10th day of June, 1902, came on to be heard the demurrers of the defendants James Stillman and Thomas Carson, administrator and individually, to the petition of intervention of the said intervenors, all of said demurrers being heard and considered together, and the court being advised of all matters of law arising thereon, is of opinion that the same should be overruled.

It is therefore ordered, adjudged and decreed by the court that all of the aforesaid demurrers of the defendants Stillman and Carson, administrator and individually, to the said petition of intervention be and the same are hereby overruled; to which order and ruling of the court the said defendants Stillman and Carson, administrator, then and there excepted.

It is further ordered that this order be duly entered on the order book of the Brownsville division.

Ordered, adjudged and decreed at chambers in the city of San Antonio, Texas, this June 10, 1902.

T. S. MAXEY, *Judge.*

582 Endorsed: No. 21. Equity. In the circuit court of the United States in and for the western district of Texas, at Brownsville. C. B. Combe, ex'r *et al. vs.* James Stillman *et al.* Order overruling demurrers of defendants Stillman and Carson to petition of intervention of Rafaela M. de Garcia Cavazos *et al.* Filed this 10 day of June, 1902. D. H. Hart, deputy.

583 *Order Setting Cause Down for Final Hearing.*

C. B. COMBE, Ex'r Stephen Powers, Dec'd, *et al.*
vs.
JAMES STILLMAN ET AL.
} No. 21. In Equity.

Be it remembered that on the 16th. day of May / 1903, upon the application of the plaintiffs; it is ordered that the above stated cause be, and it is hereby set down for final hearing before this court at the present term, upon the original and amended bills of complainant of the plaintiffs, process and service and return, the answers of Stillman and Carson and Woodhouse and the replication thereto of the plaintiffs; orders *pro confesso* against all defaulting defendants, bills of revivor, process, service and return thereon, and orders of revivor; and all the pleadings in the several interventions filed herein, and the proofs which have been or may be filed or offered in the cause; and all the exhibits to the pleadings and evidence herein; and upon all the previous proceedings in the cause.

Attest:
C. DART,
Clerk U. S. Circuit Court, Southern Dist. Texas.

584 *Order of Court Taking Cause under Advisement.*

United States Circuit Court, Southern District of Texas.

C. B. COMBE, Executor, ET AL.
vs.
JAMES STILLMAN ET AL.
} Equity. 21.

MAY 21, 1903.

On this day again came the parties to this suit by their solicitors, and thereupon the hearing of the cause was resumed before the court, and the hearing concluded and the cause submitted and taken under advisement by the court. It is ordered that all objections and exceptions to testimony and written briefs of the parties be presented and filed with the court within 30 days from this date.

W. T. BURNS, *Judge.*

585 *Order to Send Papers to San Antonio.*

U. S. Circuit Court, Southern District of Texas, Brownsville Division, May Term, 1903.

C. B. COMBE, Ex'r, ET AL.
vs.
JAMES STILLMAN, THOMAS CARSON, Adm'r, *et al.*
} No. 21. Equity.

In open court, on this May 21, 1903, at Brownsville, Texas, all parties to said cause consenting, the clerk of this court is directed to send all of the file papers herein to the clerk of the U. S. circuit court at San Antonio, within ten days after the adjournment of court. The clerk of said court at San Antonio to retain all of said file papers in his office for 20 (20) days, subject to the inspection of counsel, but to permit none to be removed therefrom, after which time the said papers are to be transmitted to the clerk of this court at Galveston, Texas.

W. T. BURNS, *Judge.*

Endorsed: Eq. 21. C. B. Combe, executor, *et al.*, *v.* James Stillman, *et al.* Order to send papers to San Antonio. Filed May 21, 1903, C. Dart, clerk.

586 *Interlocutory Decree.*

In the Circuit Court of the United States for the Southern District of Texas, Brownsville Division.

C. B. COMBE, Independent Executor of Stephen Powers, Deceased, *et al.*
vs.
JAMES STILLMAN ET AL.
} No. 21. Equity.

Be it remembered that the above styled cause was set down for final hearing at the May term, A. D. 1903, at Brownsville, Texas, on the 21st day of May, 1903, the same being a day of the regular term of said court, the cause came on to be heard upon bill, exhibits, process, service and return, appearances, answers, replications, *pro confessos*, exhibits and all previous orders and proceedings in this cause, and also upon intervenor's petition and the answers of the other parties thereto, and all the evidence taken and filed herein, and all parties thereupon announced ready for trial and introduced and submitted to the court all evidence taken in this cause, but owing to the necessity for an early adjournment of court, the court

was unable to hear argument at the Brownsville term, and thereupon as appears of record, an order was entered by which the court took said case under advisement for the purpose of hearing oral argument, and for the filing of briefs herein, and afterwards the cause was set down for oral argument of counsel therein in the Houston division of said southern district of Texas, on the 28th day of September, 1903, and the court having heard the argument of counsel therein on this the 3rd day of October, and being advised of all matters arising in said cause, doth find and order as follows:

First. That the pleadings and contentions of the defend-
587 ants Stillman and Carson to the jurisdiction of this court, and in abatement as to the capacity of C. B. Combe, as independent executor of Stephen Powers, deceased, to prosecute this suit, and as to the right of the Cavazos heirs to intervene, and as to the jurisdiction of the court to administer the relief sought by said Cavazos heirs should be overruled, to which findings and rulings of the court the defendants Stillman and Carson in open court except.

Second. The court finds that the military reservation at Fort Brown, Texas, and in controversy herein, contains three hundred and fifty-eight acres of land.

Third. That the tract of land conveyed by Francisca Cavazos to Jose Miguel Paredes, and known as the Paredes tract, does not include any part of said Fort Brown reservation, and the parties herein claiming under said title are not entitled to recover herein by virtue of the Paredes claim.

Fourth. That the Cavazos tract of land includes all of the Fort Brown reservation except 21.48 acres covered by the Miguel Salinas tract, and that the parties herein claiming under the Cavazos tract are entitled to recover proportionately.

Fifth. That the Miguel Salinas tract includes 21.48 acres in the Fort Brown reservation, and the parties herein claiming under the said tract are entitled to recover proportionately.

Sixth. That the United States Government, on April 10, 1895, paid to James Stillman, for the fee, and its use of *the* Fort Brown three hundred and fifty-eight acres, the sum of one hundred and sixty thousand dollars ($160,000.00) which sum was accepted by him in trust for the owners of said land as aforesaid.

Seventh. That of the said one hundred and sixty thousand dollars ($160,000.00), as trustee, James Stillman has properly expended:

For taxes, the sum of	$8101.02
To Wm. Brady the sum of	20000.00
To Shearman & Sterling, the sum of	25000.00
To exchange on New York	80.00
588 Aggregating	$53181.02

leaving in his hands for distribution herein the sum of one hundred and six thousand eight hundred and eighteen and

98/100, out of which trust fund there shall be paid before any distribution to any parties herein all costs in this behalf incurred, including attorneys' fees and all commissions taxed herein as costs.

Eighth. That after paying all costs as above provided, the balance of said fund is awarded and shall be paid to the following named parties, and in the following proportions, that is to say:

(1.) Said balance shall be divided by 358, the acreage of the entire reservation, to get the value of each acre, and the sum so found shall be multiplied by 21.48, the acreage of the Salinas tract, and of the sum so derived, C. B. Combe, as independent executor of the estate of Stephen Powers, deceased, shall recover one-half or the equivalent of 10.74 acres; and the devisees of H. E. Woodhouse shall recover 8/18, or the equivalent of 9.54 acres.

(2.) After the sums awarded to C. B. Combe, as independent executor of the estate of Stephen Powers, deceased, and to the devisees of H. E. Woodhouse, as above provided, have been deducted from the balance of the trust fund then remaining as aforesaid, the remainder is awarded, one-half to James Stillman, and the other one-half to the heirs of Pedro G. Cavazos, as represented by the Cavazos intervenors, subject to the interest of J. D. Childs, attorney for said intervenors.

Ninth. That D. H. Giddings is not entitled to recover upon his intervention herein, and the same is dismissed without prejudice to the rights, if any, of said intervenor.

Tenth. That S. J. Brooks, receiver herein, is hereby allowed $500.00 to be taxed as costs herein.

Eleventh. That C. L. Bates and W. N. Parks, counsel for complainants herein are hereby allowed the sum of five thousand dollars ($5,000.00) each; $5,000.00 payable out of the funds now in court directly to C. L. Bates, and $5,000.00 payable out of the funds now in court directly to W. N. Parks, and the final decree to
589 be entered herein shall direct that checks be drawn in favor of said solicitors respectively for the amounts allowed to them respectively and signed and certified by this court, payable out of the funds now in the registry of the court.

Twelfth. That the matters if any due from the estate of Maria Josefa Cavazos to James Stillman not arising out of the fund herein involved, and to other creditors of this estate, are not adjudicated by this decree and shall not be prejudiced thereby.

Thirteenth. That James Stillman should at once pay into the South Texas National Bank of Houston, Texas, to the credit of this court, the sum of one hundred and six thousand eight hundred and eighteen dollars and $\frac{38}{100}$, less $50,000 heretofore deposited by him in said depository under the orders of this court, and in the event he shall not make said deposit by the seventh day of December, A. D. 1903, a final decree shall be entered for said sum against him and his sureties upon his bond heretofore filed in this court, and payable under its orders to its receiver S. J. Brooks; and S. J.

Brooks, receiver is hereby directed to furnish said Stillman with a certified copy of this decree and demand the payment of said fund.

Fourteenth. It is further ordered, adjudged and decreed that this interlocutory order shall be entered upon the order book at the Brownsville division, and that at the December term of the Brownsville court, a final decree shall be entered in this cause, based upon these findings, and in accordance therewith.

Fifteenth. That the defendant Thomas Carson, as administrator of the estate of Maria Josefa Cavazos, has no interest in the subject matter of this litigation, and is not entitled to recover herein.

Sixteenth. That the other parties herein, whether complainants, intervenors or defendants are not entitled to recover anything herein.

Seventeenth. The clerk of this court is hereby ordered to immediately make out a certified cost bill and file with the papers in this case, which cost bill shall show all costs that have been
590 incurred in the prosecution or defense of this suit, of every kind or character, and whatever division of the court the same may have been incurred, which bill shall show the amounts paid by the several parties herein and to whom and for what paid as shown by the vouchers presented by the respective parties to said clerk, and from the record of this court.

W. T. BURNS,
U. S. Judge.

(Endorsed: Eq. 21. C. B. Combe, executor, *et al.*, *vs.* James Stillman, *et al.* Interlocutory decree. Filed October 3, 1903. C. Dart, clerk.)

591 *Order Granting Rehearing.*

In the United States Circuit Court for the Southern District of Texas.

C. B. COMBE ET AL.
vs.
JAMES STILLMAN ET AL. } Equity. No. 21.

The motion of the defendant for re-hearing of the above numbered and entitled cause having been argued and submitted, and the court being advised in the premises, and it appearing that the copy of the will of Madam Maria Josefa Cavazos, offered in evidence by the parties to said suit was not in fact a true copy of said will, in that, twelve (12) words were omitted in the copy offered to and con-dered by the court in determining the respective rights of the Cavazos heirs, and it further appearing that by said interlocutory decree entered in said cause, based upon the copy of the will as offered, the heirs of Pedro G. Cavazos would acquire the entire

Cavazos interest as against the several heirs at law, and that such disposition of said estate does not appear to be the expressed intent of the testatrix, as is made certain by inspection of what purports to be a certified copy of the said will of Madam Cavazos, the petition for rehearing is granted and said interlocutory decree of date October 3rd, 1903, is vacated. The heirs at law of Madam Maria Josefa Cavazos, are hereby permitted to intervene in said cause in order that their rights, if any, may be ascertained and fixed.

The intervenors, the heirs of Pedro G. Cavazos, have leave to amend and supplement their pleading, and are hereby authorized, as upon application, to take testimony establishing their equities, if any, against the distributive share, or shares, due the heirs at law by reason of advances and expenditures, if any, made by the said Pedro G. Cavazos.

592 Houston, Texas, Oct. 28, 1903.

W. T. BURNS, *Judge.*

Endorsed: Eq. No. 21. C. B. Combe, *et al. vs.* James Stillman, *et al.* Order granting rehearing. Filed October 28, 1903. C. Dart, clerk.

593 C. B. COMBE, Independent Executor of the Estate of Stephen Powers, Deceased, and C. B. Combe, Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph E. Combe, and Emile P. Combe, Complainants,

vs.

JAMES STILLMAN, THOMAS CARSON; THOMAS Carson, Administrator of the Estate of Maria Josefa Cavazos, Deceased; Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Mat Gerhard, J. L. Landrum, Juan Salinas, Francisco Yturria, Henry Miller, Charlotte Miller, Charles S. Dana, Maria Grogan Dana, Frances E. Landrum, Agnes Anastacia Browne, J. A. Browne, Lilian Mary Hicks, Administratrix of the Estate of Annette P. Hicks, Deceased; Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Mary B. Woodhouse, Independent Executrix of the Estate of H. E. Woodhouse, Deceased, Defendants; Pedro G. Cavazos, Miguel Garcia Cavazos, Francisca Garcia Cavazos de Treanor, Miguel Garcia Cavazos, Rafaela M. de Garcia Cavazos, Rafael G. M. Cavazos, Adelede G. M. Cavazos, Josephina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, Jose G. M. Cavazos, G. H. Giddings, S. J. Brooks, Receiver; C. L. Bates, W. N. Parks, Duval West, Intervenors.

No. 21. In Equity.

Final Decree Entered December Term, A. D. 1903, *as of May Term,* 1903.

Be it remembered that on this 12th day of December, A. D. 1903, the same being a day of the regular December term of this court at the Brownsville division thereof, there came on to be further heard the above stated cause, and it appearing to the court from the record in this cause that upon motion of the plaintiffs an order was duly made and entered setting this cause down for final hearing at the regular May term A. D. 1903 of this court, at its Brownsville division, and that upon the 20th day of May, A. D. 1903, the same being a day of said regular May term of said court at the Brownsville division thereof, this cause came on to be finally heard by the court upon the original and amended bills of plaintiffs and all ex

hibits thereto, process, service and return thereof, pleas to
594 the jurisdiction by James Stillman and Thomas Carson, defendants, appearances and answers of the defendants James Stillman and Thomas Carson individually and as administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and all exhibits to said answers, and the answer of Mary B. Woodhouse, independent executrix of the estate of H. E. Woodhouse, deceased, and the replications of plaintiffs to said answers, orders of the court upon the pleas to the jurisdiction, orders of the court *pro confesso* as to all the other defendants and all previous proceedings and orders had in the case and also upon the petitions of intervention filed by intervenors Rafael G. M. Cavazos, Adelede G. M. Cavazos, Josephina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, Jose G. M. Cavazos, and also upon the petition of intervention of G. H. Giddings and the demurrers, exceptions and answers of the plaintiffs and defendants James Stillman and Thomas Carson individually and Thomas Carson administrator of the estate of Maria Josefa Cavazos, deceased, to said petitions of intervention, and all of the various orders and proceedings of the court thereon and all the evidence introduced in this cause.

And it further appearing that on said date, May 20th, 1903, the plaintiffs and the defendants James Stillman and Thomas Carson individually and Thomas Carson as administrator of the estate of Maria Josefa Cavazos, deceased, and Mary B. Woodhouse, independent executrix of the estate of H. E. Woodhouse, deceased, and all of the above named intervenors appeared by their solicitors in open court upon the call of said cause for trial and announced ready for trial thereon; and thereupon the cause proceeded to trial and the said parties introduced and submitted to the court all their evidence in the cause which was duly entered and filed as read, and the cause was thereupon submitted to the court for final determination, but owing to the necessity for an early adjournment of the court, and because of press of business, the court was unable to hear argument of counsel in said cause and finally determine the same at the said May term, A. D. 1903; and thereupon, upon conclusion of
595 the introduction of the testimony and the announcement made by all parties to said suit that they had no further testimony to be introduced in said cause, the court of its own motion and for its own convenience made and entered in said cause an order as follows, towit:

"C. B. COMBE, Independent Executor of the Estate of Stephen Powers, Deceased, *et al.*
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

On this day again came the parties to this suit by their solicitors and thereupon the hearing of the cause was resumed before the court and the hearing concluded and the cause submitted and taken

under advisement by the court; it is ordered that all objections and all exceptions to the testimony and written briefs of the parties be presented and filed with the court within thirty days from this date May 20, A. D. 1903.

W. T. BURNS, *Judge.*"

And it further appearing that the printed briefs of counsel for the respective parties were presented and filed in this cause on or before July 15, A. D. 1903, and, in pursuance of an order of the court duly made setting the same down for argument, the cause was argued orally before the court by the counsel of said complainants and James Stillman and Thomas Carson individually and as administrator of the estate of Maria Josefa Cavazos, deceased, and all of the intervenors in Houston, Texas, at the Houston division of this court on the 28th day of September, A. D. 1903, to and including October 3rd A. D. 1903; and upon the conclusion of said argument on October 3rd, 1903, the court pronounced and entered an interlocutory decree determining and declaring the rights of the parties to the subject matter of this litigation and setting the cause down for final decree at its December term, A. D. 1903, at Brownsville, Texas. And it further appearing to the court that the delay in entering a final decree in this cause at this its December term, A. D. 1903 instead of at its May term, A. D. 1903 is due to the act of the court and upon its own motion and for its convenience because of the press of business and the intricate questions in-
596 volved in the cause necessitating its takeing this cause under advisement; and it further appearing that it is necessary that this decree shall be now entered to take effect as of May 21, A. D. 1903, in order that the same may not work an injustice or injury to the parties herein, but without prejudice to the right of any party desiring to appeal from this decree:

Now on this the 12th day of December, A. D. 1903, the same being a day of the regular December term of this court at its Brownsville division, it is ordered, adjudged and decreed by the court that the following final decree be and the same is here now entered in this cause to take effect as of date May 21, A. D. 1903, the same being a day of the regular May term at Brownsville, to wit:

I.

The complainants having heretofore dismissed their cause as to the defendants Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Mat Gerhard *and* it is ordered, adjudged and decreed by the court that said defendants go hence without day and recover of the complainants all costs in this behalf incurred.

II.

The complainants having heretofore duly and regularly and more than thirty days before the May term, A. D. 1903, taken judg-

ments *pro confesso* against the defendants Juan Salinas, Francisco Yturria, Henry Miller, Charlotte Miller, Charles S. Dana, Marie Grogan Dana, Frances E. Landrum, J. L. Landrum, Agnes Anastacia Brown, J. A. Brown, Lilian Mary Hicks, individually
597 and as executrix of the estate of Annette P. Hicks, deceased; said *pro confesso* decrees are hereby made final and it is ordered and decreed by the court that neither one of said defendants have or recover any portion of the fund involved in controversy in this suit, except as Frances E. Landrum, J. L. Landrum, Agnes A. Browne, J. A. Browne, Lillian May Hacks individually, and as executrix of Annette P. Hicks may be entitled to thro' C. B. —— executor of the estate of Stephen Powers, deceased.

III.

The court having fully considered the pleas interposed by defendants James Stillman and Thomas Carson as administrator of the estate of Maria Josefa Cavazos, deceased, to the jurisdiction of the court to hear and determine this cause either as to the complainant's bill or as to the petition of intervention filed herein by the heirs of Pedro G. Cavazos, deceased; and because of the incapacity of the complainants and said intervenors to maintain this suit, overruled said pleas to the jurisdiction and in abatement. To which ruling of the court the said defendants James Stillman and Thomas Carson individually and as administrator of the estate of Maria Josefa Cavazos, deceased, excepted.

IV.

And the court having fully considered the objections urged by the respective parties to the testimony offered herein by the opposing parties, is of the opinion that said objections should be and they are hereby overruled. To which ruling of the court the respective parties excepted.

V.

The court having found against the claim of the defendants Thomas Carson individually and the right of Thomas Carson as administrator of the estate of Maria Josefa Cavazos, deceased, to receive the fund involved herein, Felicita Salinas, Andrea Salinas, and R. D. Hinojosa, it is ordered, adjudged and decreed by the court that neither one of said defendants have or recover any portion on the fund involved in controversy in this suit; though this finding shall not affect the claim of the heirs of Maria Josefa Cavazos, to said fund as hereinafter awarded.

VI.

598 The court having found that C. B. Combe is the independent executor of the estate of Stephen Powers, deceased, and as such is entitled to recover as hereinafter recited, it is ordered,

adjudged and decreed that the complainants, C. B. Combe, individually, Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph K. Combe and Emile P. Combe have and recover no portion of the fund involved in controversy herein, except as they may be entitled to receive the same through C. B. Combe as independent executor of the estate of Stephen Powers, deceased, as hereinafter recited and set forth, and no further.

VII.

The court having found that the defendants James Stillman and Mary B. Woodhouse, as independent executrix of the estate of H. E. Woodhouse, deceased, are entitled to recover a portion of the fund in controversy herein, it is ordered, adjudged and decreed by the court that their interest in said fund be established and fixed as hereinafter recited.

VIII.

The court having found that Maria Josefa Cavazos by her will left her property to her three children, Pedro G. Cavazos and Miguel Garcia Cavazos, and Francesca Garcia Cavazos de Treanor, and that Pedro G. Cavazos died intestate leaving as his heirs Rafaela M. de Garcia Cavazos, his widow, who is entitled to one-third of his estate, or one-ninth of the estate of Maria Josefa Cavazos, deceased; and Rafael G. M. Cavazos, Adelede G. M. Cavazos, Josefina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, Jose G. M. Cavazos, each of whom is entitled to receive one-sixth of the other two-thirds of the estate of Pedro G. Cavazos, or one-twenty-seventh of the estate of Maria Josefa Cavazos, deceased, it is ordered, adjudged and decreed by the court that the estate of Maria Josefa Cavazos, deceased, is entitled to recover of the fund in controversy herein, as hereinafter stated and subject to the terms of the distribution hereinafter set forth; and that Miguel Garcia Cavazos, his heirs, assigns or representatives recover one-third of said estate and Francisca
599 Cavazos de Treanor, her heirs, assigns or representatives, recover one-third of said estate and that Rafaela M. de Garcia Cavazos, widow of Pedro G. Cavazos, recover one-ninth of said estate, and that Rafael G. M. Cavazos recover one-twenty-seventh and that Adelede G. M. Cavazos recover one-twenty-seventh and that Josefina G. M. Cavazos recover one-twenty-seventh and that Julio G. M. Cavazos recover one-twenty-seventh and that Pedro G. M. Cavazos recover one-twenty-seventh and that Jose G. M. Cavazos recover one-twenty-seventh.

IX.

The court having found that the intervenor G. H. Giddings, is not entitled to recover upon his intervention herein, it is ordered, adjudged and decreed by the court that the intervenor G. H. Giddings have and recover no part of the fund involved in contro-

versy herein, but that this claim against any other persons for services alleged to have been rendered by him be, and the same is not, in any manner affected by this adjudication against his claim upon the fund.

X.

The court having found that the intervenor S. J. Brooks is entitled to the sum of five hundred dollars for services rendered by
600 him as receiver herein, it is ordered, adjudged and decreed by the court that S. J. Brooks, receiver, recover of the sum in controversy herein the sum of $500.00.

XI.

The court having found that the counsel C. L. Bates and W. N. Parks, representing plaintiffs herein have prosecuted this suit and impounded the fund herein for the benefit of all parties at interest herein are each entitled to recover the sum of five thousand dollars for services rendered herein by them, it is ordered adjudged and decreed that C. L. Bates do recover of the fund in controversy herein the sum of $5,000.00 and that W. N. Parks do have and recover of the sum in controversy herein the sum of $5,000.00.

XII.

The interested parties having in open court agreed that the intervenor Duval West has rendered services herein for the estate of Maria Josefa Cavazos, deceased, and for such services is entitled to recover from that portion of said estate of Maria Josefa Cavazos deceased, awarded to Miguel Garcia Cavazos and Francisca Garcia Cavazos de Treanor, their heirs, assigns or representatives, the sum of $1,000.00, it is ordered, adjudged and decreed by the court that Duval West do have and recover of and from that portion of the fund awarded to said children of Maria Josefa Cavazos, deceased, the sum of $1,000.00.

XIII.

The court having found against the Cavazos intervenors upon their claims against the defendant James Stillman individually, it is ordered, adjudged and decreed by the court that the said intervenors, heirs of Pedro G. Cavazos, take nothing upon their claim against said defendant James Stillman.

XIV.

And the court having declined to order or enter into an accounting between James Stillman and the estate of Maria Josefa Cavazos, deceased, as represented herein by Thomas Carson, administrator of said estate, or between James Stillman and Thomas Carson indi-

vidually, it is ordered, adjudged and decreed by the court
601 that said accounting be denied and the claims of James Stillman against said defendants and the accounting claimed by James Stillman against the said estate of Maria Josefa Cavazos, deceased, be and the same are not in any manner prejudiced by this decree, but the said James Stillman, or his assigns, is hereby permitted to intervene upon any claims he may have against the estate of Maria Josefa Cavazos, deceased, to the end that the fund awarded to said estate may if proper be subjected to the payment of debts due from said estate to James Stillman, or his assigns.

XV.

The court having found that the Paredes tract of land did not include any part of the military reservation, it is ordered, adjudged and decreed by the court that the complainant C. B. Combe, as independent executor of the estate of Stephen Powers, deceased, (and the defendant Mary B. Woodhouse, as executrix of the estate of H. E. Woodhouse, deceased), do have and recover no part of the fund in controversy herein and by virtue of their claim or title to the Paredes tract of land, to which complainants in open court excepted.

XVI.

The court having found that the Salinas tract of land, containing twenty-one and 48/100 acres of land is included entirely within the reservation and that the complainant C. B. Combe, as independent executor of the estate of Stephen Powers, deceased, is the owner of one-half of said Salinas tract, or ten and 74/100 acres thereof, and that the defendant Mary B. Woodhouse, as executrix of the estate of H. E. Woodhouse, deceased, is the owner of five and 37/100 acres of said Salinas tract, it is ordered, adjudged and decreed by the court that the said C. B. Combe as independent executor of the estate of Stephen Powers, deceased, do have and recover of the fund in controversy herein in the proportion to the acreage awarded him above, subject to the charges herein fixed to be paid out of said fund, and that the said Mary B. Woodhouse, as executrix of the estate of H. E. Woodhouse, deceased, do have and recover of the fund in controversy herein in the proportion to the acreage awarded her
602 above, subject to the charges herein fixed to be paid out of said fund.

XVII.

The court having found that the balance of the acreage of the military reservation in controversy herein is owned by the defendant James Stillman and the estate of Maria Josefa Cavazos, deceased, jointly, each owning an undivided one-half, it is therefore ordered, adjudged and decreed by the court that of the balance of said fund the said James Stillman do have and recover one-half, subject to the charges herein fixed to be paid out of said fund.

And it is further ordered, adjudged and decreed by the court that the heirs of Maria Josefa Cavazos, deceased, do have and recover the remainder or other one-half of the fund in controversy herein, subject to the charges herein fixed to be paid out of said fund.

XVIII.

The court having found that on April 10, 1895, the United States Government paid to James Stillman, as trustee, for the fee and use and occupation of Fort Brown reservation of three hundred and fifty-eight acres the sum of $160,000 and that in collecting the said sum the said James Stillman, as trustee, has expended the sum of $53,818.02, as follows: to Wm. Brady $20,000; to Shearman & Sterling $25,000; exchange on New York $80.00; taxes $8,101.02, leaving as a balance in his hands as trustee $106,818.98, which sum is to be distributed under the orders of this court and in accordance with this decree; and the court having further found that of said sum James Stillman has heretofore paid into the depository of this court the sum of $50,000.00 leaving a balance in the hands of James Stillman of $56,818.98, it is ordered, adjudged and decreed by the court that said James Stillman shall, within thirty days from this date, pay into the court's registry the sum of $56,818.98, and to enforce this order it is further ordered, adjudged and decreed by the court that S. J. Brooks, received herein, do have and recover of James Stillman and Fidelity and Deposit Company of Maryland, his surety upon the bond heretofore filed in this cause in accordance with the orders of the court, to secure the payment of said fund, the sum of $56,818.98; for which let execution issue, as at
603 law if the said sum shall not be deposited by James Stillman in accordance with this decree within thirty days from the date hereof; and upon collection of the said sum of money the said receiver S. J. Brooks, is hereby ordered and directed to pay the same into the registry of this court, the total sum of $106,818.98, to abide further orders herein.

And it is further ordered, adjudged and decreed by the court that upon the payment of said balance of $56,818.98 into court in accordance with this decree, the said James Stillman and his sureties upon his bond, be and they are hereby discharged from all further liability upon said bond and the said S. J. Brooks be discharged as receiver, and he and the sureties upon his bond as receiver be and they are hereby discharged from all further liability upon said receiver's bond.

Upon said sum of money having been deposited to the order of and in the registry of this court, as above provided for, for distribution thereof, the clerk of this court is hereby directed to draw checks upon said fund, which checks are to be countersigned by this court, in favor of the respective parties and in accordance with the decrees above rendered, and the checks endorsed by said parties shall be their receipts in discharge of their respective rights herein, that is to say:

(1.) In favor of C. Dart, clerk of this court, for $3942.00, costs in this behalf incurred, including all costs paid by the respective parties herein, and which shall be refunded to them by the clerk; subject to be retaxed if found incorrect upon motion and hearing.

(2.) In favor of S. J. Brooks, receiver, for the sum of $500.00;

(3.) In favor of C. L. Bates for $5,000.00;

(4.) In favor of W. N. Parks for $5,000.00;

(5.) In favor of C. B. Combe, as independent executor of the estate of Stephen Powers, deceased, for the sum of $2771.30, being 10.74/358 of the balance of said fund;

(6.) In favor of Mary B. Woodhouse, executrix of the estate of H. E. Woodhouse, deceased, in the sum of $1385.65, being
604 5.37/358 of said balance of said fund.

(7.) In favor of James Stillman for the sum of $44,110.02 being one-half of the balance of said fund;

(8.) It is further ordered, adjudged and decreed by the court that out of the sum of $44,110.01 awarded to the heirs of Maria Josefa Cavazos, deceased, being the remainder of said fund, the clerk shall, by check as aforesaid, pay to Duval West the sum of four thousand dollars, which sum of $4,000 shall, however, be a charge, as aforesaid, against the interests awarded to Miguel Garcia Cavazos and Francesca Garcia Cavazos de Treanor, their heirs, assigns or representatives, and not against the interest or share, awarded to the other child, Pedro G. Cavazos, his heirs, assigns or representatives, and shall be paid out and distributed by the clerk of this court by checks in favor of the respective parties to whom said fund is awarded, countersigned by the court, as follows:

(*a*.) To the respective intervenors who may have established an equitable right to said fund by reason of having made advances, if any, to reduce the same to possession;

(*b*.) The balance of said fund, after first paying the costs incident to such interventions, shall be paid out and distributed as follows: One-third of said fund, less $2,000 previously awarded to Duval West, shall be paid to Miguel Garcia Cavazos, his heirs, representatives or assigns, in the following proportions, viz: To Mrs. Josefa Martinez, widow of Miguel Garcia Cavazos, one-third; Miguel Garcia Martinez four twenty-firsts for himself and as assignee of Rafael Garcia Martinez; Maria de los Angeles Garcia Martinez, two twenty-firsts; Martiniano Garcia Martinez, two twenty-firsts; Juan Garcia Martinez, two twenty-firsts; Josefa Garcia Martinez, two twenty-firsts; Magdalena Garcia Martinez, two twenty-firsts; and one-third, less $2,000 awarded to Duval West, shall be paid to the heirs, representatives or assigns of Francesca Garcia Cavazos de Treanor, in the following proportions, viz: To Mother St. Agnes, independent executrix of the estate of Rafaela Treanor, alias Sister Mary Cecilia, deceased, for the benefit of the Academy of
605 Nazareth, of Victoria, Texas, devisee and legatee under the will of said Rafaela Treanor, Margarita Treanor, Josefa Treanor and Librada Treanor, one-sixth each, and to Juan Treanor,

for himself and as assignee of Jose Treanor, two-sixths; and the remaining one-third of said fund, or that awarded to the estate of Pedro G. Cavazos, deceased, shall be paid out and distributed as follows: One-third of the portion awarded to Pedro G. Cavazos, shall be paid to Rafaela M. de Garcia Cavazos, and of said balance, two-eighteenths each shall be paid respectively to Rafael G. M. Cavazos, Adelede G. M. Cavazos, Josefina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, and Jose G. M. Cavazos.

To which judgment the defendants, complainants and intervenors excepted.

Done in open court at Brownsville, Texas, this the 12th day of December, A. D. 1903.

W. T. BURNS, *Judge.*

Endorsed: Eq. 21, C. B. Combe, executor, *et al.*, *v.* James Stillman, *et al.*, Final decree, Filed Dec. 12, 1903, C. Dart, clerk.

606 *Transcript of Record in No.* 248.

Record in No. 248. Law.

Introduced in evidence, embracing the following papers:

Transcript from State District Court.

Filed Nov. 23, 1886.

THE STATE OF TEXAS, }
Cameron County. }

In the District Court.

To his honor, judge of the 28th judicial district of Texas:

Now comes your petitioner-, Leocardio Salinas and Antonio Salinas, and Merlchor Salinas, and Bernardo Salinas, Higinio Salinas, and Alejandro Salinas, all resident citizens of Cameron county, Texas, and Jose Maria Salinas, who resides in the Republic of Mexico, and is an alien friend of the United States of America, and Vicente Salinas and Juan Salinas, resident citizens of Cameron county, Texas, and each and all heirs of Miguel Salinas, deceased, and complain of one William L. Kellogg, who is a resident citizen of Cameron county, and State of Texas, and so complaining the plaintiffs say: That on or about the 1st day of May, A. D. 1846, the ancestor of these plaintiffs, to wit: Miguel Salinas, was seized in fee and was in the lawful possession and use of a large tract of real estate lying and being situated in the county of Cameron and State of Texas, and on the north and left bank of the Rio Grande river, opposite the city of Matamoros? Mexico, and a part of the original

grant and tract called "Espiritu Santo;" granted by the Spanish government in A. D. 1781, to one de la Garza, containing one hundred and fifty acres of land, more or less; anciently called the "labor" of land, which was held under lease by one Dona Maria de Jesus Escamilla, prior to the year 1833; and in that year (September 20, 1833), purchased by Escamilla from Dona Francisca Cavazos, and is bounded by the land anciently called "Lus Rendon," land as far as the main watering place of the pasture ground on the left bank of the Rio Grande river.

607 Plaintiffs aver that on the said 1st day of May, 1846, one Zacharia Taylor, then a citizen and brigadier general of the Army of the United States of America, did unlawfully and forcibly break into and upon said aforesaid tract, piece or parcel of land, and with force did eject and put out their said ancestor, the said Miguel Salinas, from the use and possession thereof, and from then until now, he, the said Zacharia Taylor, and his successors from the said 1st day of May, 1846, to this day, and from said Zacharia Taylor down to the said William Kellogg, have held and now continue to hold by force the wrongful possession of said tract of land, and large parts thereof, to the great wrong and injury of them, complainants.

That said tract, piece or parcel of land is of immense value and the reasonable rental thereof from the said first day of May, 1846 to the first day of May, 1886, is four thousand dollars per annum, or $160,000.00.

Plaintiffs aver that they are the heirs and only heirs of the said Miguel Salinas, deceased, who died in 1852, and that they became seized in fee to the lands here sued for upon the death of their father, their mother being then dead.

They pray for process against said William Kellogg, and that they have their judgment and decree against him for the possession of said tract, piece or parcel of land and their writ of possession, and for their judgment, for their rent, to-wit: $160,000.00 (one hundred and sixty thousand dollars) and all costs, etc., and for all such other and further general and special relief legal and equitable as they may be entitled to, as in duty, etc. etc.

A. J. EVANS,
Attorney for Plaintiffs.

Endorsed: No. 1458. Heirs of Miguel Salinas *vs.* William L. Kellogg. Plaintiffs' original petition. This action is brought as well to try the title as for damages. Filed June 29th, 1886. Louis Kowalski, cl'k dist. ct. Cam. Co., Texas.

608 *Citation for William L. Kellogg.*

Issued June 29th, 1886.

The State of Texas to the sheriff or any constable of Cameron county, Greeting:

You are hereby commanded to summon William L. Kellogg to be and appear before the honorable district court of Cameron county, Texas, at the next regular term thereof, to be holden at the court house in the city of Brownsville, on the 1st Monday in October, A. D. 1886, then and there to answer the plaintiff's petition filed in a suit in said court on the 29th day of June, A. D. 1886, wherein Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Juan Salinas, each and all heirs of Miguel Salinas, deceased, are plaintiffs, and William L. Kellogg is defendant. File number of said suit being No. 1458.

The nature of plaintiff's demand is as follows, to wit: an action to try title for a certain piece of land, being and situated in the county of Cameron, and State of Texas, and on the north or left bank of the Rio Grande river, opposite the city of Matamoros, Mexico, and a part of the original grant, and called "Espiritu Santo," granted by the Spanish government, in A. D. 1781, to one de la Garza, containing one hundred and fifty acres of land, more or less, anciently called the "labor" of land held under lease by one Maria de Jesus Escamilla, prior to the year 1833, and in that year (September 20, 1833) purchased by Escamilla from Dona Francisca Cavazos, and is bounded by the land anciently called "Luz Rendon's" land as far as the main watering place of the pasture ground on the left bank of the Rio Grande river, and prayer for judgment, writ of possession, and for their rents, to wit: one hundred and sixty thousand dollars, and all costs.

And you will deliver to the said defendant, in person, a true copy of this citation.

Herein fail not, and have you then and there this writ, with your endorsement thereon, showing how you have executed the same.

609 Attest: LOUIS KOWALSKI,
Clerk of the District Court of Cameron County, Texas.

Given under my hand and seal of said court at office in Brownsville, this the 29th day of June, A. D. 1886.

[SEAL.] LOUIS KOWALSKI,
Clerk District Court, Cameron County, Texas.

Endorsed: No. 1458. District court Cameron county, Texas. October term 1886. Heirs of Miguel Salinas *vs.* William L. Kellogg. Citation. Issued June 29th, 1886. Louis Kowalski, district clerk.

Petition of Intervenor H. E. Woodhouse.

Filed June 30th, 1886.

THE STATE OF TEXAS, }
County of Cameron. }

In the District Court.

HEIRS OF MIGUEL SALINAS }
vs. } No. —.
WILLIAM L. KELLOGG. }

To his honor, judge of the 28th judicial district of Texas:

Now comes Humphrey E. Woodhouse and moves the court for leave to intervene in the above and foregoing suit.

And having obtained leave of the court, most respectfully represents that he is the true legal and equitable owner of all the rights, titles, interests and claims which the said Higinio Salinas and Alejandro Salinas, and Jose Maria Salinas, and Bernardo Salinas, set up and claim in the above suit, and prays the court that on trial of this case that his interests as above set out be fully recognized by the judgment, order and decree of this court.

H. E. WOODHOUSE,
For Himself.

(Endorsed:) No. 1458. Heirs of Miguel Salinas *vs.* William L. Kellogg. Petition of intervenor, H. E. Woodhouse, Filed June 30th, 1886. Louis Kowalski, cl'k of dist. ct. Cameron Co., Tex.

610 *Order of Continuance.*

Entered October 8th, 1886.

The Honorable John C. Russell, judge of the 28th judicial district of Texas, presiding in and for the county of Cameron, having arrived, now took the bench in the furtherance of his prerogative:

The court met.

Present: Hon. John C. Russell, judge; D. McNeill Turner, dist. att'y; S. A. Brito, sheriff, and Louis Kowalski, clerk.

The minutes of yesterday were read and approved, when the court proceeded to business as follows, towit:

HEIRS OF MIGUEL SALINAS }
vs. } 1458. Trespass to Try Title for Rents, etc.
WILLIAM L. KELLOGG. }

On this day this cause was continued by consent.

Whereupon, no further business appearing, the court took a recess until tomorrow at nine o'clock a. m.

Petition for Removal of Case to U. S. Court.

Filed October 26th, 1886.

In District Court, State of Texas, County of Cameron.

HEIRS OF MIGUEL SALINAS
vs. } No. 1458.
WILLIAM L. KELLOGG.

The petition of William L. Kellogg, the above named defendant, shows to the court that the above suit was begun against him in the district court of the State of Texas, county of Cameron, on or about the 29th day of June, A. D. 1886.

That at the time said suit was begin, and at the present time, the defendant was and is a citizen of the State of Ohio, and the plaintiffs are and were citizens of the State of Texas.

611 That the matter in dispute in said suit and for which said suit is brought exceeds the sum of five hundred dollars, exclusive of costs and the defendant herewith files a bond with good and sufficient surety for his entering in the circuit court of the United States, of the western district of Texas, at Brownsville, Texas, wherein said suit is pending on the 1st day of the next session of said court, a copy of the record in said suit, and for paying all costs that may be awarded in said circuit court, if said court shall hold that such suit was wrongfully, or improperly removed thereto, as provided by the statute of the United States.

Wherefore, the defendant prays this honorable court that said bond may be approved, and said suit be removed into the circuit court of the United States, for the western district of Texas, in the city of Brownsville, Texas, and that this court proceed no further in the premises.

WILLIAM L. KELLOGG, *Petitioner.* [L. S.]

STATE OF OHIO, }
County of Franklin. }

William L. Kellogg, being duly sworn, says: That he is the defendant in the above entitled action and has read the foregoing petition subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge.

Sworn to and subscribed before me this 13th day of October, A. D. 1886.

[L. S.] FRANK T. CLARKE,
Notary Public in and for Franklin County, Ohio.

THE STATE OF OHIO, }
Franklin County. }

I, John J. Joyce, clerk of the court of common pleas, which is a court of record within and for said county and State aforesaid, do hereby certify that Frank T. Clarke, is an acting notary public in and for said county, duly commissioned and sworn. That all his official acts as such are entitled to full faith and credit: That the foregoing signature, purporting to be his, is true and genuine,
612 and that the foregoing instrument is executed according to the laws of the State of Ohio.

Witness my hand and seal of said court, this 13th day of October, A. D. 1886.

[L. S.]

JOHN J. JOYCE, *Clerk.*
JOHN C. GETRAN, *Deputy.*

Endorsed: No. 1458. Heirs of Miguel Salinas *vs.* William L. Kellogg. Petition for removal of case to U. S. circuit court. Filed October 26th, 1886. Louis Kowalski, clerk, district court, Cameron county, Texas.

Bond for Removal of Cause to U. S. Circuit Court.

Filed October 26th, 1886.

District Court, Cameron County, Texas.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG. } No. 1458.

Know all men by these presents: That I, William L. Kellogg, as principal, and —— —— as surety, are held and firmly bound unto Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Juan Salinas, each and all heirs of Miguel Salinas, deceased, in the penal sum of one thousand dollars, the payment whereof well and truly to be made unto the said Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas and Juan Salinas, heirs and assigns, we bind ourselves, our heirs, representatives and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions the said William L. Kellogg, having petitioned the district court of Cameron county, State of Texas, for the removal of a certain cause therein pending, — the said Heirs of Miguel Salinas are plaintiffs and William L. Kellogg is defendant

and numbered 1458, to the circuit court of the United States, in and for the western district of Texas, at Brownsville, Texas.

613 Now, if the said William L. Kellogg, your petitioner, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by the said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

Witness our hands and seals this 12th day of October, A. D. 1886.

WILLIAM L. KELLOGG. [L. S.]
WILLIAM KELLY. [L. S.]
THOMAS CARSON. [L. S.]

THE STATE OF TEXAS, }
County of Cameron. }

Approved October 26th, 1886.
[L. S.]

LOUIS KOWALSKI,
Cl'k Dist. Ct. Cam. Co., Tex.

Endorsed: No. 1458. Heirs of Miguel Salinas *vs.* William L. Kellogg. Bond for removal of cause to U. S. circuit court. Filed October 26th, 1886. Louis Kowalski, cl'k dist. ct. Cameron Co., Texas.

Judgment Removing Cause to U. S. Circuit Court.

Entered October 28th, 1886.

THURSDAY, *October 28th, A. D.* 1886—9 o'clock a. m.

The court met.

Present: As before.

The minutes of yesterday were read and approved, when the court resumed proceedings as follows, to wit:

HEIRS OF MIGUEL SALINAS *vs.* WILLIAM L. KELLOGG. } 1458. Trespass to Try Title for Rents, etc.

On this day, came on to be heard the defendant's application, filed on the 26th day of October, A. D. 1886, for the removal of

614 this cause to the United States circuit court for the western district of Texas, holding sessions at Brownsville, Texas, and the same being duly considered, because it is the opinion of the court, that said application is in due form, and the defendant is entitled to remove said cause, it is therefore so ordered, and the bond and security accompanying said application is also accepted and approved, and the clerk of this court is hereby ordered to make a tran-

script of the record and proceed in the manner prescribed by law for the removal of this cause, and deliver the same to the clerk of the said United States circuit court. Whereupon, no further business appearing, the court was now adjourned until the next term in course.

Clerk's Certificate.

THE STATE OF TEXAS, }
County of Cameron. }

I, Louis Kowalski, clerk of the district court of Cameron county, in the State of Texas, do hereby certify that the foregoing 11 pages in writing contain a full, true and correct copy of all papers filed and proceedings had in cause No. 1458, wherein The Heirs of Miguel Salinas are plaintiffs and William L. Kellogg is defendant, as taken from the originals on file in my office, and from the minutes of said court.

To certify which, I hereunto set my hand and impress the seal of court, at office in Brownsville this 23rd day of November, A. D. 1886.

[SEAL.] LOUIS KOWALSKI,
Clerk District Court, Cameron County, Texas,
By JULES LUCADOU, *Deputy.*

Transcript from Cameron county, endorsed: No. 248, Heirs of Miguel Salinas *vs.* William L. Kellogg. Transcript from district court, Cameron county, Texas, A. D. 1886. In the circuit court of the United States, in and for the western district of Texas, at Brownsville, Filed November 23, 1886. Charles F. Stillman, clerk, U. S. circuit court, W. D. T. at Brownsville. Refiled in No. 21, 615 Equity, C. B. Combe, ex'r. *vs.* James Stillman, *et al.* Filed July 15, 1887. D. H. Hart, clerk.

Answer of William Kellogg.

Filed December 27, 1886.

In the Circuit Court of the United States, Sitting at Brownsville, Texas, for the Western District of Texas.

HEIRS OF MIGUEL SALINAS }
vs. } No. 248.
WILLIAM L. KELLOGG. }

And now comes Rudolph Kleberg, attorney for the United States for the western district of Texas, and by the instruction of the Attorney General of said United States, appears in behalf of the defendant William L. Kellogg, in this cause.

1. And defendant for answer in this behalf pleads not guilty to trespasses and injuries alleged in plaintiff's petition, and of this he puts himself upon the country.

2. And for further answer in this behalf that defendant is and was at the time of service of citation in this suit, a major in the United States Army—major of the 19th infantry and commandant of Fort Brown, which fort is situated upon the land in controversy in this suit, and which said land is in possession and is held by and on behalf of the United States, known as the Fort Brown reservation, and used and occupied by said United States as a miliatry post.

Defendant for the said United States pleads outstanding title of the premises in controversy in the following parties, to wit:

1. The heirs of Stephen Powers, deceased, whose residence is to your defendant unknown.

(2.) C. S. Dana and his wife, *née* Maria Grogan, whose residence is to defendant unknown.

3. H. E. Woodhouse, whose residence is to defendant unknown.

616 4. Frabcisco Yturria, whose residence is to defendant unknown.

5. Matt Gerhard, whose residence is to defendant unknown.

6. Charlotte Miller, who resides in Cameron county, Texas.

7. In Thomas Carson, residing in Cameron county, Texas.

8. In James Stillman, residing in the State of New York.

9. In Pedro G. Cavazos, residing in Mexico.

Wherefore defendant says that the above named persons should be made parties defendant to this suit, before the court passes upon the validity of plaintiffs' title, in order that defendant may be the better enabled to sustain and maintain said outstanding title, and in order to reach a final adjudication of the true title to said reservation.

Wherefore, defendant prays that said persons be duly cited according to law to answer the plaintiffs' petition in this cause filed.

RUD. KLEBERG,
U. S. Attorney, Appearing for William L. Kellogg, Defendant.

Endorsed: No. 248. U. S. circuit court, western dist. of Texas, at Brownsville, Heirs of Miguel Salinas *vs.* William L. Kellog, Original answer. Filed December 27, 1886. Charles F. Tighlman, clerk. Rud. Kleberg, U. S. attorney. In the circuit court of the United States in and for the western district of Texas, at Brownsville. Refiled in No. 21, Equity, C. B. Combe, ex'r *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk.

Original Answer of the United States.

Filed December 27, 1896.

In the Circuit Court of the United States, Sitting at Brownsville, Texas.

617 HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG.

And now comes The United States, by her attorney, Rudolph Kleber, U. S. attorney for the western district of Texas, and makes herself party defendant to the above entitled suit, and for answer in this behalf says:

1. Defendant denies all and singular the allegations in plaintiffs' petition contained, and pleads not guilty to the trespasses alleged therein, and demands strict proof thereof.

2. Defendant pleads title in her own right, and superior outstanding title in the following parties:

1. Pedro G. Cavazos, a resident of Matamoros, Mexico.

2. James Stillman, a resident of the city of New York.

3. Thomas Carson, as administrator, *cum testamento* annexed of the estate of Maria Josefa Cavazos, deceased, residing in Cameron county, State of Texas.

4. The heirs of Stephen Powers, deceased, whose residence is to said attorney unknown.

5. C. S. Dana and his wife, *née* Maria Grogan, whose residence is unknown,

6. H. E. Woodhouse, whose residence is unknown.

7. Francisco Yturria, whose residence is unknown.

8. Matt Gerhard, whose residence is unknown.

9. Charlotte Miller, who resides in Cameron county, Texas, and others, all of which defendant is ready to verify.

RUD. KLEBERG,
U. S. Attorney.

Endorsed: No. 248. U. S. circuit court, western dist. of Texas, at Brownsville, Heirs of Miguel Salinas *vs.* William L. Kellogg. Original answer for and on behalf of the United States. Filed December 27th, 1886. Charles F. Tighlman, clerk. Rud Kleberg, U. S. attorney. Refiled in cause No. 21. Equity, C. B. Combe, ex'r, *vs.* James Stillman, *et al.* Filed July 15, 1897, D. H. Hart, clerk.

618 *Motion to Make Parties.*

Filed Jan. 6th, 1887.

In the Circuit Court of the United States, Sitting at Brownsville, Texas.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG.

And now comes Rud Kleberg, U. S. att'y, for the western district of Texas, and on behalf of defendant William L. Kellogg and the United States, moves the court, leave first being had and obtained, to make the following named persons parties defendant to the above entitled suit for the better adjudication of the title to the land in controversy, to-wit:

1. Charles S. Dana, and his wife Maria Grogan Dana, residing in Boston, State of Massachusetts.
2. B. O. Hicks, guardian of the estate of Frances E. Powers, minor, living in Brownsville, Texas.
3. B. O. Hicks and Charles B. Combe, executors of the will of Stephen Powers, deceased, residing in Brownsville, Cameron county, Texas.
4. B. O. Hicks and his wife, Annette P. Hicks, of Cameron county, Texas.
5. James A. Browne, and his wife Agnes A. Browne, residing in Cameron county, Texas.
6. Frances E. Powers, Matt Gerhard, Francisco Yturria, Juan Salinas, Vicente Salinas, Rafael G. Hinojosa, Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, Kate M. Combe and C. B. Combe, Charlotte Miller, Felicita Salinas and Andrea Salinas, all of Cameron county, Texas.
7. Henry Miller, State of Illinois.
8. H. E. Woodhouse, residing in Cameron county, Texas.
9. Pedro G. Cavazos, residing in Mexico.
10. James Stillman, residing in the State of New York.

Wherefore defendant prays that the said persons be duly
619 cited to answer plaintiffs' petition.

RUD. KLEBERG, *U. S. Att'y.*

Endorsed: No. 248. U. S. circuit court, western dist. of Texas at Brownsville. Heirs of Miguel Salinas *vs.* William L. Kellogg. Motion to make parties. Filed Jan'y 6th, 1887. Charles F. Tighlman, clerk, Rud. Kleberg, U. S. attorney. Refiled No. 21 Equity, C. B. Combe, ex'r., *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk.

Waiver of Service and Appearance of Defendants.

Filed April 26, 1887.

In U. S. Circuit Court, Western District of Texas.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG.

The undersigned, having been made parties defendant to the above entitled and numbered cause, do hereby waive the issuance of citation and accept service of the same and enter their appearance to the July term, 1887, of this court.

JAMES STILLMAN,
By attorneys, BALLINGER, MOTT & TERRY.
THOMAS CARSON,
Adm'r of the Estate of Maria Josefa Cavazos, Deceased.
CHARLOTTE MILLER,
By attorney, W. H. MASON.
CHARLES S. DANA AND
MARIE GROGAN DANA,
By WELLS & HICKS, *Their Attorneys.*
B. O. HICKS,
Guardian Estate Francis E. Powers.
B. O. HICKS AND
CHARLES B. COMBE,
Executors S. Powers,
By WELLS AND HICKS, *Their Attorneys.*
B. O. HICKS AND
ANNETTE P. HICKS,
620 By WELLS & HICKS, *Their Attorneys.*
JAMES A. BROWNE AND
AGNES A. BROWNE,
By WELLS & HICKS, *Their Attorneys.*
CHARLES B. COMBE AND
KATE M. COMBE,
By WELLS & HICKS, *Their Attorneys.*
MATT GERHARD,
By WELLS & HICKS, *His Attorneys.*
FRANCISCO YTURRIA,
By WELLS & HICKS, *His Attorneys.*
ANDREA SALINAS AND
FELICITA SALINAS DE LEONEO,
By WELLS & HICKS, *Their Attorneys.*

Endorsed: C. L. No. 248. In U. S. circuit court. Heirs of Miguel Salinas *vs.* William L. Kellogg, *et al.* Waiver of service and appearance of defendants. Filed this 26th day of April, A. D. 1887. Charles F. Tighlman, clerk of U. S. circuit court. Refiled in No. 21 Equity. C. B. Combe, ex'r. *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk.

Application for Order to Serve Absent Defendants.

Filed May 23rd, 1887.

In the Circuit Court of the United States for the Western District of Texas, at Brownsville.

HEIRS OF MIGUEL SALINAS *vs.* WILLIAM L. KELLOGG. } 248.

To the Honorable E. V. Turner, judge of said court:

Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, residing in Cameron county, Texas, in which county the administration of said estate is pending, respectfully represents unto your honor:

That on the 29th day of June, A. D. 1886, plaintiffs in the
621 above numbered and entitled cause brought their suit of trespass to try title in the district court of Cameron county, Texas, against the defendant, who is a major in the regular army of the United States, and was then in command of the army post at Brownsville, known as Fort Brown, containing about one hundred and fifty acres, more or less, on which are situated barracks and other public buildings of the Government. The petition alleges that plaintiffs were the owners of the said property and sought recover- and possession hereof from the said defendant. That on the 30th day of June, 1886, H. E. Woodhouse intervened in said cause, setting up ownership in himself of the respective interests of Higinio Salinas, Jose Maria Salinas, Alejandro Salinas, and Bernardo Salinas, praying the same to be set apart to him:

Upon the application of defendant, the cause was removed into this honorable court, and at the January term 1887, R. Kleberg, Esq., U. S. district attorney for the western district of Texas, being thereunto instructed by the Attorney-General of the United States, appeared in behalf of defendant, and also made himself, in his said official capacity, a party, and amongst other pleas set up outstanding title in the following named persons, and prayed that they be made parties defendant for the better adjudication of the title to the land in controversy, to wit:

Charles S. Dana and wife, of Boston, Mass.; B. O. Hicks, guardian of Frances E. Powers, of Brownsville, Texas; B. O. Hicks and

Charles B. Combe, executors of Stephen Powers, deceased, of Brownsville, Texas; B. O. Hicks and wife of Brownsville; James A. Browne and wife of Brownsville; Frances E. Powers; Matt Gerhard; Francisco Yturria; Juan Salinas; Vicente Salinas; Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased; Charles B. Combe and wife; Charlotte Miller; Felicita Salinas; and Andrea Salinas, all of Cameron county, Texas; Henry Miller of the State of Illinois; H. E. Woodhouse of Cameron county; Pedro G. Cavazos, of Mexico; and James Stillman of New York. That on the 6th day of January, 1887, your honor granted the said application and directed that the above named parties be made de-
622 fendants in this cause, and that the clerk of this court issue citation as the law directs to each of the persons named therein; that all of the said named parties, with the exception of the said Henry Miller, have been brought into court, either by legal service of process, or by waiver of process and voluntary appearance; and the cause will be ready for trial as soon as legal service can be had on the said Henry Miller. He further represents that in the said application of the district attorney, the said Henry Miller was represented as a citizen of the State of Illinois, and that no process should be issued to him by the clerk without further and additional order of your honor in the premises. That the said Henry Miller is a resident and citizen of the city of Chicago, in the county of Cook, in the State of Illinois, of which place he was a resident and citizen at the time he was interpleaded as a party defendant in this cause, as hereinbefore stated.

That the estate of the said Maria Josefa Cavazos is largely interested in the property in controversy in this suit, and that it is to the interest of all parties, including the Government, that there should be a speedy adjudication and determination of the title; that the said Henry Miller is not and will not be within the said western district of Texas, and petitioner is informed and so states that he has not and will not make voluntary appearance in this cause. The premises considered, the said Carson prays that your honor will be pleased to grant an order directing the said Henry Miller to appear and answer in this cause by the 1st day of July, 1887, requiring the clerk to make out a certified copy of said order and send the same to the United States marshal for the northern district of Illinois, by him to be served upon the said Miller and returned as in cases of other process, and for such other order as your honor may be pleased to grant in the premises, looking to proper and legal process upon the said Miller.

BALLINGER, MOTT & TERRY,
Attorneys for Thomas Carson, Administrator.

623 Endorsed: No. 248. U. S. circuit court, western district of Texas. Heirs of Salinas *vs.* William L. Kellogg. Application for order to serve absent defendant. Filed May 23rd, A. D.

1887. Charles F. Tighlman, clerk. Refiled in No. 21 Equity. C. B. Combe, ex'r *vs.* James Stillman *et al.* Filed July 15, 1897. D. H. Hart, clerk.

Answer and Reconvention of James Stillman.

Filed July 11th, 1887.

UNITED STATES OF AMERICA:

Pleas in the Circuit Court of the United States for the Southern District of Texas.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG, HUMPHREY E. WOODHOUSE, and Others; James Stillman, Pedro G. Cavazos, Personally and as Trustee, and Others, Defendant-. } No. 248.

Plea of James Stillman, defendant, April, 1887.

James Stillman, a citizen of the State of New York, by leave of this honorable court appears as intervenor defendant in this action, and answering the petition of the said plaintiff and also the intervening plea of each and every of the parties to this action, says that he denies the alleged seizing and title to said premises of each and every of said parties, excepting the said Pedro G. Cavazos; and likewise denies each and every of the alleged trespasses in that behalf alleged.

II. And for a further answer and plea in reconvention as to the said premises commonly called Fort Brown, this defendant says that he is seized in fee simple of the one undivided half part of the said premises, that is to say: Beginning at a point on the left
621 bank of the Rio Grande river, adjoining the city of Brownsville, where a line in the center of 14th (Fourteenth) street of said city, moving southwestwardly, strikes the said river; thence north, fifty-seven and twenty-five one-hundredths degrees east, on a line, moving thirty feet west of the quartermaster's wall now there standing two thousand (2000) feet to the center of Monroe street, in said city, intersecting the city limits of Brownsville; thence south sixty-one degrees, three thousand four hundred and fifty (3450) to a mesquite post set for a corner; thence south thirty degrees nine hundred and fifty (950) feet to low water mark on the Rio Grande river; thence up the said river at low water mark, as the same winds and turns about fifteen thousand (15000) feet to low water mark at the place of beginning, containing about three hundred and fifty-eight and 8–10 acres of land, be the same more or less; the whole thereof being now and for the past forty years in the

actual occupancy of the military government of the United States under the title of this defendant and of his grantors, and in subservience and recognition of the said title.

Which title is deduced from the original grant made by the Crown of Spain in 1781, to one Don Salvador de la Garza, and which was duly confirmed by the State of Texas, by an act of its legislature passed February 10, 1852; (Rev. Stats. sec. 4461, Cameron county, subdiv. 42) in which act the said grant, called by its ancient name of "Espiritu Santo" comprising about sixty leagues of land, is confirmed forever to the heirs and legal assignees of the said original grantee, who departed this life about 1782, leaving his sone, Don Blas, his heir; said Blas departed this life about 1802, leaving his last will and testament, by which he devised, a portion, one-fifth of the said grant, to Maria Josefa Cavazos, his niece, and the remaining four-fifths thereof to his wife one Francisca Cavazos (Garza).

By the last will of said Francisca Cavazos, who departed this life in 1835, the one undivided third part of the whole tract was devised to the said Maria Josefa Cavazos, less a portion thereof, which
625 has been sold to one Miguel Paredes, and by a subsequent act of partition (according to the Mexican law) between and among all the parties interested in the Espiritu Santo grant, a certain portion of the tract, which includes the whole of the garrison grounds of Fort Brown above described, as well as the whole of the city site of the city of Brownsville, was apportioned to and became the property of the said Maria Josefa Cavazos.

And this defendant further shows that during the ownership and life time of the said Francisca Cavazos, and from the year 1826 down to 1846, by certain illegal and irregular ordinances and acts of the town council of the city of Matamoros, a very considerable portion of the estate of said Cavazos, adjoining said river, and opposite the city of Matamoros, including the most part of the said premises (now Fort Brown) was illegally and forcibly seized and taken possession of by various Mexicans under alleged leases from said city of Matamoros, as and for what *was* called the "ejidos" or town lands of said city, by which said premises were divided up into small tracts called "labors" separated only by unsubstantial and temporary brush fences, and illegally held by said lessees of Matamoros, in defience of Mexican law, and all the rights of said Cavazos; until finally by the order and decree of the appropriate legal tribunal of the State of Tamaulipas, the claims and pretensions of the said city of Matamoros to the said premises as "ejidos" and the tenure of the several labor holders in said premises, as lessees of said city, were annulled, exploded and held and determined to be altogether null and void in the year 1848.

During the said illegal seizing and holding of the said premises by the said labor holders as lessees of Matamoros and in the year 1846, the military forces of the United States took possession of the whole of the said premises (Fort Brown) removing the huts and jacales and all the temporary fences and subdivisions of the land,

obliterating all the lines of the several "labors" and expelling the tenants thereof, the said lessees; and have continued to hold and occupy the said premises as a military reservation of the
626 United States, from 1846 to the present day; having erected thereon from time to time during the past forty years many substantial buildings and improvements adapted to the military service of the Government of the United States.

And this defendant further shows that during all the years which have elapsed since 1826, and particularly to the year 1846, and from that to 1880, the various labor lease holders conceiving themselves entitled to some advantage, if not to the complete ownership in fee of their various labors of ground, under the authority of the city of Matamoros, continued to deal in the said leases, to transfer them, with the possession of the land, where they held it from one person to another, to execute deeds and conveyances of the land, as if held in fee, and to create apparent liens and encumbrances upon the same at the suggestion of creditors, and to procure the recording in the books of the county clerks' offices of the various deeds, conveyances, liens and incumbrances, precisely as if they severally owned the said labors of land in fee; moreover, there were during the years aforesaid constant efforts among and by the said labor holders to enlarge and expand their said holdings, by setting out their fences and removing the temporary erections and land marks; the result of all being greatly to complicate and confuse the true title, and to render it difficult, if not impossible, to prove by the testimony of living witnesses, what was the true extent, or what were, at any time, the true bounds of any of said labors on the grounds of what is now Fort Brown.

And defendant further says that the several claims of the said Salinas, Woodhouse, Miller, Gerhardt and of sundry other claimants arise out of, and originated in the labor leases from the city of Matamoros above described, and are without other foundation and without merit, worthless and void.

III. And for a further plea in this behalf, this defendant says: That heretofore, and in the year 1853, under and in pursuance of an act of the legislature of the State of Texas, passed December 19, 1849, the military officer in charge being the authorized agent of
627 the United States of said Fort Brown, one Stewart Van Vliet, acting under the authority and direction of the War Department of the United States, appeared in the district court of Cameron county, at Brownsville, and presented his petition in writing in behalf of the United States, in accordance with said statute for the survey and appraisal of value of the said above described premises then and ever since known as Fort Brown, and to order a conveyance of the same to the United States for the purpose and in the way and manner as provided by the said statute.

And thereupon the said district court made an order to be duly published in a certain public newspaper, known as "The American Flag," published weekly at Brownsville, aforesaid, and the said

order was duly published in said paper for eight weeks successively, requiring all persons interested, or claiming to be interested in the said premises, hereinbefore described, known as Fort Brown, to be and appear in the said court upon a certain day therein appointed, to set forth and to establish severally their title or claim; and on the proper day, the said Mrs. Maria Josefa Cavazos appeared, by her attorneys and also the City of Brownsville, by its attorneys, and each set forth their respective titles, both and each claiming in hostility to each other, all the right, title and interest of, in and to the said premises, and none of the said parties to this action, nor any or either of their grantors appeared upon that occasion to set up any title, right or claim of their own, or to contest the title of Mrs. Cavazos, or for any other purpose.

And then and there the said premises were duly ordered by said court to be surveyed, and the survey thereof brought into court; and the said parties, the City of Brownsville, and the said Mrs. Cavazos, by their respective attorneys, being present in court, and a competent jury being duly empanelled and sworn according to the said statute for that purpose to ascertain and determine the value of the said lands and premises. After viewing the same, and hearing the evidence and allegations of the said parties then before them as claimants, duly returned with their verdict into court, and then and there on the 29th day of November, 1853, duly delivered
628 the same; by which they found the value of the said land to be the sum of fifty thousand dollars, and which verdict *as* then and there duly received and recorded and approved to the satisfaction of the judge of the said court.

And at that time, then and there a certain action at law was pending between the said, The City of Brownsville, of the one part, and the said Mrs. Maria J. Cavazos, of the other part, with other defendants, involving the whole title of the said land called Fort Brown, and also of other lands and premises adjoining, the title to which was asserted by the said city under an act of the legislature of the State of Texas, passed in 1850, pretending to release certain interests to said city, and the said Mrs. Cavazos and the parties united in interest with her, relied upon the ancient Spanish grant of 1781, and the regular defense and deraignment of title hereinbefore set forth, which action being then (in 1853) pending and undetermined in that court, all further proceedings after the receiving and approval of the said verdict were suspended to await the final result of the said litigation, so involving the title; and thereupon the military authorities of the United States took exclusive possession of the whole of the said premises and put up a substantial wall and fences about it, and erected substantial buildings on the same, and so have continued from that day to this to own, hold and possess the same, subject, however, to the pending proceedings for condemnation and expropriation as aforesaid.

And the said litigations in said court, so involving the whole title of said premises claimed by the said city of the one part, and by the

said Mrs. Cavazos of the other, so remained and continued pending from said district court into this the circuit court of the United States and then the Supreme Court of the United States at the city of Washington, until finally concluded and determined in the said Supreme Court by judgment; by which judgment the right, title and interest of the said Mrs. Maria J. Cavazos, of, in and to the whole of the said Fort Brown premises, was confirmed, adjudged and established, and the claims of the said city were utterly annulled and held void.

629 And after the judgment of the said circuit court of the United States, at the city of Galveston, on the 6th day of June, 1876, by which the rights of the said Mrs. Cavazos were established (although the said case was continued to the Washington court by writ of error) an application in behalf of Pedro G. Cavazos, devisee in and under the last will, etc., of his mother, the said Mrs. Cavazos, was duly made to the said district court of Cameron county, where the said condemnation proceedings were still pending and undetermined for judgment and consummation of the said matter; and due notice to the said The United States, being shown, such proceedings were thereupon had and concluded, awarding the title, possession and exclusive jurisdiction of the whole of said premises of Fort Brown to the said The United States, upon the payment of the said The United States of the said sum of fifty thousand dollars and interest upon the same from November 29th, 1863; the final award of the said money when so paid into court to be made thereafter, to the said The City of Brownsville, or to Pedro G. Cavazos, the executor and devisees of the last will of the said Mrs. Cavazos (who departed this life in November 1878) upon and after the final determination of the said pending writ of error in the United States Supreme Court as aforesaid; and the judgment of the said district court was thereupon duly rendered to that effect, on the 20th day of February A. D. 1879, and to the records thereof still remaining in the said court, never having been reversed, annulled, modified, or appealed from, this defendants begs leave to refer and to rely upon in this action as a conclusive answer to all the aforesaid claims and pretenses of the said plaintiff, and all the parties to this action who failed to appear in the said proceeding of 1853, whose title is not deduced by regular deraignment from the said Cavazos title to said premises.

IV. And for a further answer and defense in this action, this defendants says, that during the lifetime of the said Mrs. Maria J. Cavazos, in the year 1875, and in pursuance of a former contract long existing between her and the late Charles Stillman of the city of New York (now deceased) she, the said Mrs. Cavazos,

630 by her deed of conveyance, under her hand and seal, and duly executed, acknowledged and delivered, duly sold and conveyed the one undivided half part or moiety of said premises of Fort Brown to him the said Charles Stillman who was the father of this defendant; by which the title to the undivided half part of said

premises was regularly vested in the said Charles Stillman, who afterwards departed this life, leaving this defendant with his brother and sisters as his heirs at law; and thereupon afterward each of the said brothers and sisters, with their mother, duly transferred and conveyed all their right, title and interest in said premises to this defendant by a deed of conveyance, duly executed, acknowledged and delivered, and each and every of the said deeds and conveyances being duly recorded in the office of the clerk of said Cameron county, this defendant refers to and relies upon the same as the evidence of his title to the said premises.

V. And for a further and distinct answer and defense in reconvention, this defendant James Stillman further says:

That during and for the years 1873, 1874 and 1875, certain State and county taxes were duly assessed upon the said premises above described, and were posted, listed, and for the want of personal property of the owners available to the tax collector of the precinct, were uncollectable and uncollected, after ten days beyond the proper time when the same were due and payable, and after due notice, according to the statute in such case provided, given to the proper delinquent party by the sheriff, and there being no personal property available for the collection of the said taxes, which were assessed upon the said premises to the amount of over ($250.00 for each and every of said years, an order of survey was duly made by said sheriff and a survey of said premises being duly made, according to the requirements of the statute, such proceedings were duly had in the county court of said Cameron county that the said premises were duly ordered to be sold for the purpose of collecting the said several amounts of delinquent taxes; and the said premises were, by the proper officer, after due notice, publicly sold on the 18th
631 day of March, 1878, to this defendant, who then and there became the purchaser thereof, in pursuance of the statute in such case provided; and thereupon received from the said officer the appropriate receipt of certificate provided by law, and paid to said officer the full amount of delinquent taxes of the years aforesaid of 1873, 1874 and 1875, with the interest, costs and expenses according to the said statutes, in all the sum of $871.00 and upwards; and afterwards, after waiting for three years or thereabouts, the said premises not being redeemed, nor the said money or any part thereof repaid, this defendant received from the proper officers of the State of Texas the appropriate deed of conveyance for the whole of said premises (hereinbefore particularly described), to him, the said defendant, his heirs and assigns forever.

Which deed of conveyance was afterwards duly recorded in the office of the county clerk of Cameron county, and remains to this day in full force and virtue, and to which, or to the record thereof, this defendant begs leave to refer, and upon which he will rely as another independent source of title to the said premises.

Wherefore, this defendant prays for the judgment of this court, to the effect that the true title and ownership of the said premises of

Fort Brown is vested in him, the said James Stillman, and that neither the said plaintiff —— Salinas, nor any or either of the other said parties to this action have any right, title interest, lien, claim or demand upon the said premises or any part or portion thereof; and for such other and further judgment, order and relief as to this honorable court shall seem meet and agreeable to equity and good conscience, with the costs of this action.

JAMES STILLMAN, *Defendant*,
By BALLINGER, MOTT & TERRY,
Attorneys for James Stillman.

JAMES R. COX, *of Counsel.*

Endorsed: No. 248. In the circuit court of the United States, in and for the western district of Texas, at Brownsville. Heirs
632 of Miguel Salinas *vs.* William L. Kellogg, *et al.* Answer and reconvention of James Stillman, Filed July 11, 1897. Charles F. Tighlman, clerk. James R. Cox; Ballinger, Mott & Terry for Stillman. Refiled in No. 21 in equity; C. B. Combe, executor, *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk.

Answer and Reconvention of Thomas Carson, Administrator.

Filed July 11th, 1887.

Pleas in the Circuit Court of the United States for the Western District of Texas, of the July Term, 1887, at the Court House in Brownsville.

In the Matter of THE SALINAS HEIRS
vs.
W. L. KELLOGG and Others, Defendants.

Answer in reconvention of defendant Thomas Carson, administrator, etc.

And now, this day, comes the defendant, Thomas Carson, as administrator, with the will annexed of the late Maria Josefa Cavazos, deceased, and in answer to the claims of the said plaintiffs, and of the said intervenor, H. E. Woodhouse, and as to all other defendants, this defendant denies all and every of the various claims and pretensions of the parties (excepting said James Stillman, defendant), as to their pretended claims of interest, right and title, in and to the said premises commonly called Fort Brown (as hereinafter particularly described), and says that none of the parties to this action, excepting the said James Stillman and this defendant as administrator, etc., has any right, title, interest or claim of, in or to any part of the premises.

633 And for a further answer and plea in reconvention as to said premises, this defendant answers and says: That by regular deraignment of title derived from the Crown of Spain in the year 1781, granted to one Salvador de la Garza, and confirmed by an act of the legislature of the State of Texas in 1852, under the name of "Espiritu Santo" grant, one Maria Josefa Cavazos was duly seized and possessed of the one-sixth part of the whole of said grant; which sixth part consisted of a strip of land reaching from the River Rio Grande, due magnetic north to the Arroyo Colorado, a distance of 25 miles; and which contained, among other lands, the whole of the said Fort Brown property, which property is now described as follows:

Beginning at a point on the left bank of the Rio Grande river, adjoining the city of Brownsville, where a line in the center of (14th) Fourteenth street of said city, moving southwestwardly, strikes the said river; thence north (57.25) degrees east, on a line moving thirty feet west of the quartermaster's wall now there standing (2000) two thousand feet to the center of Monroe street in said city, intersecting the city limits of Brownsville; thence south sixty-one degrees east (3450) three thousand four hundred and fifty feet to a mesquite post set for a corner; thence south 30 degrees east (950) nine hundred and fifty feet to low water mark of the river; thence up the said river at low water mark as the same winds and turns, about (15000) fifteen thousand feet to the place of beginning, containing about three hundred and fifty-eight and 8–10 acres of land, be the same more or less; the whole thereof being now and for many years past in the actual and exclusive possession and occupation of the United States as a military reservation, as the same are thus held and possessed.

And the said premises being so owned by perfect seizing under the last will, etc. of Maria Josefa Cavazos, who died in 1835, devised the same to the said Maria Josefa Cavazos of Matamoros, who, by her deed of conveyance, executed in or about the month of March, 1875, sold, aliened and conveyed the one undivided half part thereof, to one, Charles Stillman, then of the city of New York, now deceased, which half part is now owned and held by one
634 James Stillman, son of the said Charles, who resides in said city of New York.

And the said Maria Josefa Cavazos, so being seized of the undivided half part of said premises above described, departed this life in November, 1878, leaving her last will, etc., which was duly proved and admitted to probate in the county court of Cameron county, where said premises are situated, in January, 1879; by which said last will the said undivided half part of the said premises, with all the rents, interest, dues and demands for use and occupation thereof, were duly devised and bequeathed to her son, one Pedro G. Cavazos, who was also named therein as sole executor thereof.

That afterwards the said Pedro, being unable to qualify as such executor, was, by the action and judgment of the said probate court, duly removed as such executor, and this defendant, Thomas Carson, was duly appointed by said court, as administrator of the estate, etc., with will annexed of the said Maria Josefa Cavazos, in the place and stead of said Pedro; and was thereupon duly qualified by suitable bail and duly sworn to discharge the duties of such administration; and authorized and directed to take the said Fort Brown property (as hereinbefore set forth) with all its rents, issues, interests, income and profits, into his possession and control as such administrator, subject to the further orders of said probate court, and hath duly entered upon and is now continuing to discharge his duties in that behalf.

And afterwards, and in or about the 11th day of April, 1887, in and by a certain action in the district court of said county, brought by this defendant as plaintiff, and prosecuted against the said Pedro G. Cavazos, and by the judgment of said court duly rendered and docketed on that day, this defendant, as administrator, etc., as aforesaid, duly recovered in that action all the right, title and interest of the said Pedro G. Cavazos, of, in and to the said premises, and the rents, issues, dues, interest and profits thereof; and now holds the same as such administrator as aforesaid.

Wherefore, this defendant respectfully asks that by the judgment of this honorable court he may be confirmed and established
635 in this action, as the rightful owner (in administration as aforesaid) of the one equal undivided half part of the whole of said premises; and of all dues and demands against the United States growing out of the same; the other half part of all being as aforesaid the property of the said James Stillman; and likewise pray for all proper and lawful relief and remedy, to which he shall appear to be entitled in the premises.

BALLINGER, MOTT & TERRY,
Attorneys for Thomas Carson, Adm'r, etc.

July 5th, 1887.

Endorsed: No. 248. In the circuit court of the United States, in and for western district of Texas, at Brownsville. Heirs of Miguel Salinas, *vs.* William L. Kellogg and others, defendants, Answer in reconvention of Thomas Carson, adm'r, etc. Ballinger, Mott & Terry, attorneys for Thomas Carson, administrator. Filed July 11, 1887. Charles F. Tighlman, clerk. Refiled in No. 21 Equity. C. B. Combe, ex'r, *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk.

Answer and Plea in Reconvention of Pedro G. Cavazos.

Filed July 13, 1887.

Pleas in the United States Circuit Court for the Western District of Texas, April, 1887.

SALINAS and HUMPHREY E. WOODHOUSE
vs.
WILLIAM L. KELLOGG, JAMES STILLMAN, and Others, Defendants.

APRIL 4TH, 1887.

Answer and claim in reconvention of Pedro G. Cavazos, defendant, impl'd with others.

636 Pedro G. Cavazos, an alien resident and citizen of the Republic of Mexico, residing in Matamoros, in the State of Tamaulipas, by James R. Cox, of Auburn, N. Y., his attorney, by leave of this honorable court, first had and obtained, becomes voluntarily a defendant in the above entitled cause and thereupon makes his answer to the claim and pretension of the said plaintiff Salinas and of the said intervenor, H. E. Woodhouse, and denies their said several petitions and claims by way of interventions and each and every of them and likewise denies each and every of the said several wrongs and trespasses therein set forth; and says that neither the said original plaintiff Salinas, nor the said intervenor, H. E. Woodhouse, has, or ever had, any right, title or interest whatsoever in the premises known as Fort Brown, and hereinafter particularly described, nor in any part aforesaid of the said premises.

And for a further defense and answer in reconvention, the said defendant Pedro G. Cavazos, says that the right, title and interest and the whole thereof, as to the whole and every part and portion of the said premises is absolutely owned and held jointly by this defendant, P. G. Cavazos, as executor under the last will, etc., of his mother, the late Dona Maria Josefa Cavazos, deceased, as to the one undivided half part thereof; and that the other undivided half part thereof is owned by the co-defendant James Stillman, of the city of New York. That the title aforesaid of both the said James Stillman and of this defendant in and to the said premises, is regularly deraigned from the original grant made in the year 1781 by the Crown of Spain to one Salvador de la Garza, of the larger tract of land known as the "Espiritu Santo" tract, which embraces the whole of the said Fort Brown property and many leagues of land adjoining the said Fort Brown to the west, to the north and to the east of it, which grant was duly confirmed by an act of the legislature of the State of Texas, passed February 10th, 1852, under the name of "Espiritu Santo" to the heirs and assigns of the said

original grantee, Salvadro de la Garza, who died in or about 1782, having his son Blas Maria de la Garza to whom the said grant
637 descended as heir at law.

And he, the said Blas María de la Garza, having so held, owned and occupied and possessed the whole of said grant, embracing the said Fort Brown premises (hereinafter particularly described) departed this life so in possession thereof, in or about the year 1802, leaving his last will, etc., which was afterwards duly proved and established, by which the whole of the said premises and other property was devised to his wife (and widow) one Dana Francisca Cavazos and his niece, Maria Josefa Cavazos, whereupon they jointly took possession of the whole of said premises and held and enjoyed the same from 1802 to the year 1835, when the said Mrs. Francisca Cavazos departed this life, leaving her last will, etc., which was afterwards duly proved and established, by which the western half of the middle third part of the whole "Espiritu Santo" grant, including the whole of the premises known as Fort Brown (as hereinafter described) was devised to, and became and was the property of the said Maria Josefa Cavazos, so being the mother of this defendant, and so remained and continued her property until about the year 1875, when the said Maria Josefa Cavazos, granted, sold and conveyed, by her deed under her hand and seal, to one Charles Stillman, then of the city of New York, the undivided half part of the said Fort Brown premises, as hereinafter described, to the use, benefit and behoof in fee simple of the said Charles Stillman, his heirs and assigns forever, continuing herself to own and hold the other undivided half part or moi-ty thereof; until she the said Maria Josefa Cavazos, departed this life in the year 1878, leaving her last will, etc., which was afterwards, in the year 1879, duly proved, established and recorded in Cameron county, by which last will, etc., she devised and bequeathed all her right, title, interest, claim and demand in the said Fort Brown property to this defendant for the use and benefit of the various descendants and members of her family, for and in behalf of whom, under said last will, this defendant as such executor claims to hold the said undivided half of said Fort Brown premises as hereinafter particularly described.

And this defendant further answering by leave of the court
638 says that the actual possession of the said premises, and also of other lands adjoining held under the titles hereinbefore set forth, has been illegally held in temporary (clerk can't read) and with-eld from the said Francisca and Maria Josefa Cavazos, continuously from about the year 1829 to the year 1846; in all seventeen years, by lessees or tenants of the city of Matamoros, under what was, by the municipal authorities of Matamoros, erroneously supposed to be the law of the land in relation to ejidos or town lands; that the authorities of said city granted leases of said land including the most part of the Fort Brown premises during those years, to various Mexican citizens, residents at Matamoros and vicinity, in small tracts called labors, each of 25 or thirty acres, reserving an

annual rent to said city, which leases were from time to time assigned from one person to another, oftentimes from father to son, and under which, in defiance of the constitutional rights of the said Francisca Cavazos and the said Maria Josefa Cavazos, the said several "labors" or tracts of land forming what is now the garrison grounds of Fort Brown, (as hereinafter described) were with held from their said rightful owners aforesaid, and occupied by the said leaseholds from about 1829 until the year 1846; when, during the war between the United States and the Republic of Mexico, the whole of the peninsula known as Fort Brown, was seized by the miliatry forces of the United States and has been from that time to the present occupied and held by said military forces as a reservation; in subordination, however, ever since the year 1853, and in recognition and acknowledgment of the rightful ownership and title of the said Cavazos, their heirs and assigns.

In the year 1853, in pursuance of the terms of an act of the legislature of the State of Texas, passed December 19, 1849, the executive officer in charge of the said military forces of the United States so then being in possession of said Fort Brown, (as hereinafter described) by the direction and with the approval of the Secretary of War of the United States, duly presented his petition to the district court in Cameron county, praying for the expropriation
639 of the said premises to the use of the said The United States, and that the proper steps might be taken under the order of the said court for the survey and appraisal of the said premises and for ascertaining who were the owners thereof, to whom suitable compensation, according to the verdict of the jury, as provided by said act, might be made; and thereupon an order was duly made by said court, and was duly published in a public newspaper published at Brownsville, for eight weeks successively in the summer of 1853, in accordance with the intent of said statute; calling upon all claimants of title, and those who were in anywise interested in the said premises, to be and appear on a certain day therein named at the district court in the city of Brownsville, to show cause, if any they have, why the said premises should not be expropriated to the service of the United States, according to the terms and provisions of the said act of the legislature; and to be present at the appraisal and assessment of value of said premises by the jury then to be impanelled and sworn.

And on the said day, at the time and place mentioned in the said published notice, the said Maria Josefa Cavazos duly appeared in the court, making her exclusive claim to said premises and protesting against there being acquired by the United States Government under the said statute and likewise the City of Brownsville, by its attorneys then and there duly appeared in the said court, and made claim to the said premises called Fort Brown as the rightful owners thereof.

And thereupon, no sufficient reason being shown why the said premises should not be acquired by the said Government of the United States,

the survey of said premises (as hereinafter set forth) being duly presented and approved by the said court, a jury of competent citizens of said county was duly chosen, impanelled and sworn, according to the provisions of said statute who, after hearing the proofs and allegations of the said parties, claimants, and having viewed the said premises, retired to consider of their verdict, returned into court with their verdict, by which the value of said premises was appraised and assessed at $50,000, which verdict
640 was thereupon duly received and approved by the said court, and entered of record; and it then appearing that a certain litigation involving the title to said premises was pending between the said The City of Brownsville on the one part, and the said Maria Josefa Cavazos and others of the other part, no final judgment was entered or given by said court, awaiting the result of said litigation. And thereupon the said The United States acting by their military officers, took exclusive possession of the whole of said premises (hereinafter particularly described), known as Fort Brown, and from time to time, from that time to the present, erected various substantial improvements and buildings thereon, and have occupied and held the same from that time, A. D. 1853, to the present time, under and in pursuance of the said proceeding, and afterwards, and in the year 1878, the said Maria Josefa Cavazos died, leaving her last will, etc., as hereinbefore set forth; and in the month of February, 1879, the said pending litigation between the *the* said The City of Brownsville and Mrs. Cavâzos and others having been brought to a close in this honorable court in June, 1876, by the judgment of which the said premises were adjudicated to be the property of the said Maria Josefa Cavazos, thereupon further proceedings upon due notice to the attorney of the United States were duly had in the said district court; and this defendant, upon producing the evidence of the decease of his said mother, the said Mrs. Maria Josefa Cavazos, and of the due probate of her last will, etc., by which she was duly appointed the executor and trustee, by the order of said district court, made on the 20th day of February, A. D. 1879, this defendant was duly substituted as claimant of the said property and premises in the place and stead of his said mother, Mrs. Cavazos; and thereupon such further proceedings were duly had in said district court of Cameron county, that a certain judgment was then and there duly rendered in the said proceedings for expropriation of said Fort Brown premises to the effect that upon the payment by the said United States of the said sum of fifty thousand dollars and interest into the First National Bank of the City of Galves-
ton the title of the said premises therein particularly
641 described, should vest forever in the said United States with the jurisdiction over the same according to the said statute; and inasmuch as the said judgment of this court of June, 1876, was then pending on writ of error in the Supreme Court of the United States at the city of Washington, it was further provided in and by the said judgment of the district court, that upon the final disposi-

tion of that cause at Washington, application might be made by either party entitled for an order in the said district court, to enable such party to reach and receive the said funds (should the same be paid over by the United States) as should be thereto entitled; and afterwards, and about the month of December, in 1879, in the said the Supreme Court of the United States at Washington, the said judgment in the case of The City of Brownsville *versus* Cavazos and others, so rendered in the honorable court in June, 1876, was in all things duly affirmed as by reference to the record thereof will more fully and at large appear.

The said premises of Fort Brown as described in the said judgment of said district court of February 20th, 1879, are as follows:

"Beginning at a point on the left bank of the Rio Grande river adjoining the city of Brownsville, where a line in the center of Fourteenth street in said city moving southwesterly strikes the said river; thence north (57.25) degrees east on a line moving thirty feet west of the quartermaster's wall, now there standing 2000 (two thousand) feet to the center of Monroe street in said city, intersecting the city limits of Brownsville; thence south sixty-one degrees east, three thousand four hundred and fifty (3450) feet to a mesquite post, set for a corner; thence south thirty degrees east nine hundred and fifty feet to low water mark of the Rio Grande river; thence up the said river at low water mark, as the same winds and turns, about fifteen thousand (15000) feet to the low water mark at the place of beginning; containing about 358.8 acres of land, be the same more or less, as the same are now held and possessed in the occupation of the United States."

Wherefore, this defendant, Pedro G. Cavazos, as devisee
642 and executor of the one undivided half part of said premises, and respectfully asks the judgment of this honorable court in reconvention and that the title of this defendant as such executor in connection with the title of the said James Stillman above set forth may be sustained and established as to the said premises, exclusive of all other claimants thereto, with the costs and expenses of this defense.

PEDRO G. CAVAZOS,
Trustee, etc.,
By JAMES R. COX,
His Attorney.

Endorsed: No. 248. In the circuit court of the United States, in and for the western district of Texas, at Brownsville. Heirs of A. Salinas *vs.* W. L. Kellogg, *et al.* Answer and plea in reconvention of Pedro G. Cavazos. James R. Cox, attorney for P. G. Cavazos. Filed July 13, 1887. Charles F. Tighlman, clerk. Refiled in No. 21. Equity. C. B. Combe, ex'r *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk.

Answer and Plea in Reconvention of the Heirs of Stephen Powers and Marie Grogan Dana.

Filed July 12, 1887.

In U. S. Circuit Court, Western District of Texas, at Brownsville, Texas.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG ET AL. } 248.

Now comes Charles S. Dana, and his wife, Marie Grogan Dana, of Boston, Mass., B. O. Hicks, guardian of the person and estate of Frances E. Powers, a minor, both of Cameron county, Texas, B. O. Hicks and Charles B. Combe, executors of the will of Stephen Powers, deceased, B. O. Hicks and his wife, Annette P. Hicks, James
643 A. Browne and his wife, Agnes A. Browne, Kate M. Combe and her husband Charles B. Combe, and answering the complaint herein filed and seeking affirmative relief in the nature of plea in reconvention, respectfully represents.

That Annet-e P. Hic-s, Agnes A. Browne, Kate M. Combe and Frances E. Powers, all of the said county of Cameron, are the only heirs of Stephen Powers, deceased, that B. O. Hicks and Charles B. Combe are the executors of the said Stephen Powers, duly qualified and acting as such, and that B. O. Hicks is the legally qualified guardian of the person and estate of Frances E. Powers, a minor, administration on whose estate is now pending in the probate court of said Cameron county.

And the said defendants deny all and singular the allegations in plaintiff's petition contained, and in the different pleas in reconvention filed by their co-defendants herein, and plead not guilty.

And for further answer and plea in reconvention, said defendants say that at the time of his death the said Stephen Powers was and his said heirs at this present time jointly with the said Marie Grogan Dana are the owners of an undivided half of the premises sued for and described in this petition acquired as follows, the said premises consisting of about 350 acres, situated on the Rio Grande river, in Cameron county, Texas, adjoining the city of Brownsville, are a part of the "Espiritu Santo" grant, made by the Spanish government to Jose Salvador de la Garza, in 1781, and that by regular descent and devise accompanied by possession, the middle third of said grant, embracing the city of Brownsville, and the said Fort Brown reservation, became the property of Mrs. Francisca Cavazos, who, in the year 1817, sold and conveyed to Jose Miguel Paredes, ten sitios or square leagues off of the eastern part of said middle third by deed duly recorded in the county clerk's office of Cameron county; and

the said Marie Grogan Dana and said heirs of Stephen Powers, deceased, are now the owners in fee simple of said eastern part of said middle third so sold and conveyed to Jose Miguel Paredes. And they allege that the said eastern part of said middle third
644 embraces about one-half of the premises in controversy in this suit.

Wherefore, the said defendants pray the judgment of this court to the effect that the true title and ownership of one-half of the said premises known as the Fort Brown reservation of three hundred and fifty acres, being the property described in the petition and in controversy in this suit, be vested in them and divested out of all the other parties hereto.

And for further answer in reconvention in this behalf, they say that the said heirs of Stephen Powers are the owners in fee simple of one-half of 22½ acres in the other half of said premises, derived by them from and under Miguel Salinas, by regular chain of title, the said Miguel Salinas having acquired the same by purchase and conveyance from Marie Jesus Escamilla, by deed dated March 30, 1835, who was then the owner in fee simple. And alleging ownership and title to themselves in the said undivided half of the said 22½ acres and pleading title thereto and therein.

Wherefore they pray the judgment of the court that the said heirs and executors of Stephen Powers, deceased, be declared the true and legal owners thereof, and that all right, title and interest therein be divested from and out of all the other parties herein and hereto and vested in said heirs and executors.

And they pray for such other and further decree in the premises as in law they may be entitled to and as to this honorable court may seem right and proper.

WELLS & HICKS,

Attorneys for B. O. Hicks, Guardian Frances E. Powers; B. O. Hicks and Charles B. Combe, Executors of Stephen Powers, Deceased, and for B. O. Hicks and Annette P. Hicks, Charles B. Combe, Kate M. Combe, James A. Browne, Agnes A. Browne, Charles S. Dana, and Marie Grogan Dana.

Endorsed: No. 248. In the circuit court of the United States, in and for the western district of Texas, at Brownsville. Heirs of Miguel Salinas, *vs.* William L. Kellogg, *et al.* Answer and plea in re-
645 convention of the heirs of Stephen Powers and Marie Grogan Dana, Filed July 12, 1887. Charles F. Tighlman, clerk. Wells & Hicks for defendants. Refiled in No. 21 Equity. C. B. Combe ex'r, *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk.

Answer and Plea in Reconvention of Yturria, Gerhardt, and Andrea and Felicita Salinas.

Filed July 12, 1887.

In U. S. Circuit Court, Western District of Texas, at Brownsville.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG ET AL. } 248.

Now comes Francisco Yturria, Matt Gerhardt, Andrea Salinas and Felicita Salinas, and answering the complaint herein filed and seeking affirmative relief in the nature of plea in reconvention, respectfully represents:

That they are owners of undivided portions of 22½ acres of the premises in controversy in this suit, known as the Fort Brown reservation, and more particularly described in the petition, to wit: Francisco Yturria owns an undivided one-eighteenth of the said 22½ acres. Matt Gerhard owns one and one-half eighteenths thereof, and the said Andrea and Felicita Salinas, own jointly an undivided one-half of one-eighteenth thereof. That the said 22½ acres, with some additional acres was acquired by Maria de Jesus Escamilla from Francisca Cavazos on the 20th of September, 1833. The said Francisca Cavazos then holding the same in fee simple and by Miguel Salinas from the said Escamilla on the 30th of March, 1835, and these defendants hold the above undivided portions
646 thereof by regular chain from and under the said Miguel.

And for further answer and plea in this behalf, the said defendants deny all and singular the allegations in plaintiff's petition contained and in all the pleas of intervention filed herein and plead not guilty.

The premises considered, the said defendants on their plea in reconvention pray that the court will be pleased to decree good and perfect title in them in and to the said undivided portions of the said 22½ acres in proportion as their interests are hereinbefore stated, and that all right, title and interest in and to the same be divested from and out of all the others, parties thereto, and vested in them. They pray for such other and further relief as in law they may be entitled and as to this honorable court may seem right.

WELLS & HICKS,
Attorneys for Yturria, Gerhardt, Andrea Salinas and Felicita Salinas.

Endorsed: No. 248. Heirs of Miguel Salinas *vs.* William L. Kellogg, *et al.* Answer and plea in reconvention of Yturria, Gerhardt and Andrea and Felicita Salinas. Filed July 12th, 1887. Charles

F. Tighlman, clerk. Wells and Hicks for defendants. Refiled cause No. 21 Equity. C. B. Combe, ex'r., *vs.* James Stillman, *et* Filed July 15, 1897. D. H. Hart, clerk.

Answer and Intervention of Hinojosa.

Filed July 13, 1887.

In U. S. Circuit Court, Western District of Texas, at Brownsvil

HEIRS OF MIGUEL SALINAS *vs.* WILLIAM L. KELLOGG ET AL. } 248.

647 Now comes R. D. Hinojosa, and intervening for his righ in the above entitled and numbered cause, respectfully re resents:

That on the 26th day of April A. D. 1881, Vicente Salinas, bein indebted to this intervenor in the sum of $976.42, sold, transferre and conveyed to intervenor all and singular the right, estate an interest of him, the said Vicente Salinas, which he had, held an owned as one of the heirs and children of Miguel Salinas, in th labor situated within the city of Brownsville, called the Migue Salinas labor, and located partly within the garrison limits of For Brown and partly northward therefrom, and derived from Don Franciaca Cavazos, through the widow of Juan Esteban Gutierrez conditioned that the said Vicente would pay the said to interveno the said $976.42 with interest. And this intervenor says that n part of the said $976.42 has ever been paid to him by the sai Vicente though more than four years have elapsed since the execu tion of said conveyance and he says that he has the equitable titl to said premises and is subrogated to the title of the said Vicente and is entitled to have the said premises decreed to him.

Wherefore, he answers and denying the allegations of plaintiffs petition contained, and of all the allegations of his codefendants and the other intervenors in this cause, pleads not guolty thereto, and pleads in reconvention and prays that the court may be pleased to divest the title to the premises hereinbefore described out of the said Vicente Salinas and out of all the other parties to this suit, and vest the same in him. He prays for such other and further relief as he may be entitled to and as to the court may seem right and proper.

WELLS & HICKS,
Attorneys for R. D. Hinojosa.

Endorsed: No. 248. In the circuit court of the United States, in and for the western district of Texas, at Brownsville. Heirs of Miguel Salinas *vs.* William L. Kellogg, *et al.* Answer and interven-

tion of Hinojosa. Filed July 13, 1887. Charles F. Tighlman, clerk. Wells & Hicks, for defendant. Refiled in cause No. 21 Equity. C. B. Combe, ex'r, *vs.* James Stillman, *et als.* Filed
648 July 15, 1897. D. H. Hart, clerk.

Demurrer, Plea, and Answer of Charlotte and Henry Miller.

Filed July 14, 1897.

Pleas in the Circuit Court of the United States for the Western District of Texas, Sitting at Brownsville.

In the Matter of THE SALINAS HEIRS
vs.
W. L. KELLOGG ET AL. } No. 248.

To the July term of said court, 1897.

Answer and plea in reconvention of Charlotte and Henry Miller.

And now comes Charlotte Miller and Henry Miller, in obedience to the order of the honorable court and make themselves parties defendant in the above numbered and entitled cause, and show to the court that they have an interest in the subject matter of litigation in the above stated cause.

And by way of demurrer these defendants say that, the allegations in plaintiff's petition contained are not sufficient in law to sustain an action, and of this pray their judgment of the court.

MASON & CELAYA,
Attorneys for said Defendants, Charlotte & Henry Miller.

And answering in said cause, defendants Charlotte and Henry Miller say that they (and neither one of them) are not guilty of the wrongs, trespasses and injuries complained of by plaintiffs.

MASON & CELAYA,
Attorneys of Charlotte & Henry Miller.

And further answering in above stated cause, these defendants, Charlotte and Henry Miller, say that they are the legal and
649 equitable owners of the following described piece or tract of land, situated in the city of Brownsville, Cameron county and State of Texas, within the enclosure of the garrison known as the Fort Brown reservation, being part of the original grant of land made by the Crown of Spain in the year 1781 to one Don Salvador de la Garza, which grant was confirmed by the legislature in 1852, and denominated "Espiritu Santo," comprising about sixty leagues of land, said original grantee, Salvador de la Garza, departed this

life about 1782, leaving his son, Don Blas, the sole heir, who died about 1802, leaving a will wherein he bequeathed to his wife, Francisca Cavazos, four-fifths of said grant, which embraced the land now in controversy; in the year 1833, said Francisca Cavazos, sold to Maria de Jesus Escamilla one labor of land, situated mostly within the limits of what is now known as Fort Brown. In the year 1833 said Maria de Jesus Escamilla sold and conveyed said labor of land to one Miguel Salinas; in 1849 said Miguel Salinas sold said labor to Antonio Salinas; in 1858 the sheriff of said Cameron county, by virtue of an execution issued out of Nueces county, on a good and valid judgment rendered in favor of Bass and Hora against said Antonio Salinas, sold all the rights, title and interest of said Antonio Salinas to said labor, and Henry Miller purchased same and took the sheriff's deed therefor, at the time of said purchase Charlotte Miller (this defendant) was the lawful wife of said purchaser Henry Miller. Said Henry Miller died about the year 1883, leaving a will devising to said Charlotte Miller all his property during her life time. Henry Miller, defendant herein, is the son and only heir of said decedant; and of his co-defendant, Charlotte. The part of said labor now in litigation and claimed by these defendants Charlotte and Henry Miller, is described by metes and bounds as follows, viz:

Beginning on the bank of the lake within the Fort Brown enclosure, at the southeast corner of this the said Antonio Salinas' labor; thence with the meanders of the said lake N. 76 degrees W. 150 varas to the line of this survey or labor, being the part of
650 the same sold by Miguel Salinas to Charles Stillman, being 12 acres now claimed by James Stillman. Thence with said line N. 7 degrees W. 145 varas. Thence south 88 degrees thirty minutes west 334 varas to the east boundary of the labor Doretero Gumora and the west boundary of this labor. Thence with the dividing line of aforesaid labor N. 12 degrees W. 66 varas to the military fence of Fort Brown. Thence with the said military fence for the north boundary of this survey N. 66 seconds E. 365 varas to an old labor, name unknown. Thence with the dividing line of said labor for the east boundary of this survey south 34 degrees 15 minutes E. 56 varas 31 degrees E. 70 varas to the labor of Luz Rendon continued with the dividing line of Luz Rendon, and this survey south 6 degrees 45 minutes W. 350 varas to the place of beginning: containing within said Fort Brown enclosure about twenty-two (22) acres of land, more or less.

These defendants Charlotte and Henry Miller, admit as charged in the plea of the United States, that there is outstanding title in these defendants as to the 22 acres of land described in plaintiffs' petition. Said twenty-two acres being by metes and bounds as above described, and deny the right or title of plaintiffs and of intervenors and of the United States, and of any and all persons claiming the same, or any part of said 22 acres above described by metes and bounds, and disclaim title as to any other lands within the said en-

closure of the said Fort Brown reservation, but claim that the said Charlotte and Henry Miller are the sole, exclusive legal and equitable owners and holders of said twenty-two acres of land, and that they and the said Henry Miller, now deceased, as aforesaid, have been the owners and holders of said twenty-two acres of land continuously from the 6th day of April, 1858 to the present time.

And further answering under and by virtue of the direction of this honorable court, as aforesaid, these defendants Charlotte Miller and Henry Miller, say that the said United States, by and through their officers, have been holding and continuously occupying said twenty-two acres of land as tenants of said Charlotte and
651 Henry Miller, from said sixth day of April, 1858.

And now by way of plea in reconvention against the said United States and the said plaintiffs and intervenors, as well as all parties to this suit, be they plaintiffs or defendants, who in any way claim said twenty-two acres of land, or any part thereof, and deny all such claims and pretenses and say that they, Charlotte and Henry Miller, have fee simple title to and are the exclusive owners of said twenty-two acres of land.

And further answering as aforesaid, these defendants, Charlotte and Henry Miller, say that said land above described is of the value of two thousand ($2,000) dollars per acre, and of the aggregate value of forty-four thousand ($44,000) dollars, and that the annual rent thereof is of the value of two thousand dollars, and that the said defendant The United States, is now justly indebted to these defendants, Charlotte and Henry Miller in the sum of fifty thousand dollars ($50,000) on account of rents accrued on said land from the said sixth day of April, A. D. 1858, to the present time.

And further answering, as aforesaid, and by plea in reconvention, these defendants, Charlotte and Henry Miller, pray this honorable court to quiet title to said twenty-two acres of land in them, and for a decree for the possession of same, or for the value thereof, the said forty-four thousand ($44,000) dollars, for which let them have writ of possession, or for execution for the value of said land, against those in possession thereof, and they further pray for judgment for the value of the rents thereof, the said sum of fifty thousand ($50,000) dollars, and for execution for said sum, and for all costs of suit in this behalf expended.

And further answering in this cause, as aforesaid, these defendants, Charlotte and Henry Miller, say that they, through their said tenants, have been in actual, peaceable and adverse possession of the land described by metes and bounds, as aforesaid, holding same under title and color of title, using, cultivating and enjoying the same for more than three years prior to the institution of this suit, and now plead the statute of limitation of three years.

And further answering in said cause, as aforesaid these
652 defendants, Charlotte and Henry Miller, say that they through their said tenants have had actual, peaceable and adverse possession of the twenty-two acres of land aforesaid, cultivating,

using and enjoying the same and paying all taxes due thereon, holding, owning and claiming same under a deed duly registered for more than five years prior and next before the institution of this suit, and they plead the statute of limitation of five years.

And further answering as aforesaid, these defendants, Charlotte and Henry Miller say that they and those under whom they claim have had actual, peaceable adverse possession continually of the said twenty-two acres of land claimed, owned and held as above described by metes and bounds for more than ten years next before the institution of this suit, and they plead the statute of limitation of ten years.

Premises considered, these defendants, Charlotte and Henry Miller, pray that title to said twenty-two acres of land be declared to be in them exclusively as aforesaid, and that the value of same be fixed as aforesaid, and for the value of rents as aforesaid, and for all costs of suit as aforesaid, and for all such relief in law or equity to which they may be entitled, general or special, as in duty bound will ever pray, etc.

MASON & CELAYA,
Attorneys for Defendants Henry and Charlotte Miller.

Endorsed: No. 248. In the circuit court of the United States, in and for the western district of Texas, at Brownsville. Heirs of Miguel Salinas *vs.* William L. Kellogg. Demurrer, plea and answer of Charlotte and Henry Miller. Filed July 14th, 1887. Charles F. Tighlman, clerk. Refiled in No. 21 Equity. C. B. Combe, ex'r, *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk.

653 *First Amended Original Petition of Intervenor Woodhouse.*

Filed July 14th, 1887.

In U. S. Circuit Court, Western District of Texas, at Brownsville.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG ET ALS. } 248.

Now comes Humphrey E. Woodhouse, by leave of the court first *heard* and obtained, and amends his petition as intervenor filed in this cause June 30th, 1886, and shows to the court that he has and holds a valid interest in the subject matter involved in litigation in the above styled and numbered cause, and by way of amendment further says: That he is the *bona fide* actual and legal owner of certain undivided portions of the land and premises in controversy in this suit, known as the Fort Brown reservation, more particularly set forth and described as follows: The undivided right, title and interest held and owned by Higinio Salinas, Alejandro Salinas, Jose Maria Salinas and Bernardo Salinas, as children and heirs of Miguel

Salinas, their father, deceased, the same being equal to the one-ninth interest apportioned each in and to that certain tract or parcel of land known as and called the Miguel Salinas labor, situated in Cameron county, Texas, and located partly within the garrison limits of Fort Brown reservation.

On the north and left bank of the Rio Grande, anciently called the "labor" of land held under lease by Maria de Jesus Escamilla, prior to the year 1833, and in that year, on September 20th, 1833, purchased by Escamilla from Dona Francisca Cavazos, and by the said Miguel Salinas from Escamilla, March 30th, 1835. That the same is bounded by the land anciently called Luz Rendon's land as far as the main watering place of the "pasture ground" as then known and called.

654 That fifty acres more or less of the said Salinas labor is enclosed and embraced in the said Fort Brown reservation, upon which a larger portion of all the valuable improvements, public building, officers' quarters, barracks and hospital of the U. S. Government are now situated. For further or more definite description of said land, intervenor refers to said deeds. That this intervenor holds the above undivided portions by regular chain from and under the said Miguel Salinas, and from and under the said Francisca Cavazos, the common source.

And for further plea in this behalf, this intervenor denies all and singular the allegations contained in plaintiff's petition in so far as any right, title or interest is set up to any portion of the undivided interests claimed by him herein as well as the allegations set forth in the pleas and answers of all parties, defendants or intervenors herein; also their said pleas in reconvention.

The premises considered, this intervenor prays that the court will decree good and perfect title in him to all the rights, title, interests and claims which the said Higinio Salinas, Alejandro Salinas, Jose Maria Salinas and Bernardo Salinas had or held in and to the lands hereinbefore described and set forth.

And that all the right, title and interest in and to the same be divested from and out of all parties hereto and vested in him, and for all such other and further relief, orders and decrees to which in law he may be entitled, and as to this honorable court may seem right.

W. H. CRAFT,
E. H. GOODRICH,
Attorneys for Intervenor, H. E. Woodhouse.

Endorsed: No. 248. In the circuit court of the United States, in and for the western district of Texas, at Brownsville, Heirs of Miguel Salinas *vs.* William L. Kellogg. First amended original peti-
655 tion of intervenor H. E. Woodhouse. Filed July 14, 1887 Charles F. Tighlman, clerk. Refiled in No. 21 Equity. C. B. Combe, ex'r *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk. W. H. Craft, E. H. Goodrich, attorneys for intervenor.

Verdict of Jury.

Filed July 14th, 1887.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG ET AL. } No. 248.

We, the jury, find for the defendants in reconvention, James Stillman and Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, in the proportion of one undivided half each, the property claimed by their pleas in reconvention here.

FRANK LUSENA, *Foreman.*

Brownsville, Texas, Cameron county, July 14, 1887.

Endorsed: No. 248. In the circuit court of the United States, in and for the western district of Texas, at Brownsville. Heirs of Miguel Salinas *vs.* William L. Kellogg. H. E. Woodhouse, intervenor. Verdict of jury. Filed July 14, 1887. Charles F. Tighlman, clerk. Refiled in No. 21 Equity. C. B. Combe, ex'r, *vs.* James Stillman *et al.* Filed July 15, 1897. D. H. Hart, clerk.

656 *Agreement.*

Filed April 26th, 1887.

In U. S. Circuit Court, Western District of Texas, at Brownsville.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG. } No. 248.

In order to save time, expense and unnecessary proofs, the following facts, as to the property in controversy in this cause, are admitted to be true.

1. That the said premises, known as the Fort Brown reservation, consists of about three hundred and fifty acres of land, situated on the Rio Grande river, in Cameron county, Texas, adjoining the city of Brownsville, and are a part of the Espiritu Santo grant, made by the Spanish government, to Jose Salvador de la Garza in 1781, and confirmed to him, his heirs and assigns, by act of the legislature of Texas, Feb. 10th, 1862, and patent issued by the State of Texas, dated June 21st, 1859.

2. By regular descent and devise, accompanied by possession, the middle third of said grant, embracing the city of Brownsville, and

the said Fort Brown reservation, became the property of Mrs. Francisca Cavazos. In the year 1817, she sold and conveyed to Jose Miguel Paredes, ten sitios or square leagues off of the eastern part of said middle third by deed recorded in the county clerk's office of Cameron county, and Marie Grogan Dana and the heirs and devisees of the late Stephen Powers, deceased, are now the owners in fee simple of said eastern part of said middle third so sold and conveyed to Jose Miguel Paredes.

3. That the western part of said middle third of said Espiritu Santo grant, consisting of a fraction over nine square leagues (with the exception of what is known as the Miguel Salinas labor claim, the title to which is in dispute), became the property of Maria
657 Josefa Cavazos by devise from the said Francisca Cavazos, who died in 1835.

4. That there are thirty four and one one-hundredths (34 1–100) acres of the said Miguel Salinas labor or claim within the limits of the said Fort Brown reservation, to which the parties hereto assert claim *to* title, which are in conflict with one another.

For the purpose of deraigning title from common source, it is agreed that Mrs. Francisca Cavazos had title in fee simple to the same on the 19th day of September, 1833.

THOMAS CARSON,
Administrator of Estate M. J. Cavazos, Deceased.
BALLINGER, MOTT & TERRY,
Att'ys for James Stillman.
WELLS & HICKS,
Att'ys for Heirs of S. Powers and Dana and Wife.
WELLS & HICKS,
Att'ys for B. O. Hicks and C. B. Combe, Ex'rs of S. Powers, Deceased.
WELLS & HICKS,
Att'ys for B. O. Hicks, Guardian of Frances E. Powers.
WELLS & HICKS,
Att'ys for F. Yturria, M. Gerhard, Andrea Salinas, and Felicita Salinas.
W. H. MASON,
Attorney for Charlotte Miller.
JAMES R. COX,
Att'y for Pedro G. Cavazos.

Endorsed: No. 248. In the circuit court of the United States in and for the western district of Texas, at Brownsville. Heirs of Miguel Salinas *vs.* William L. Kellogg. Agreement. Filed this 26th day of April, A. D. 1887. Charles F. Tighlman, clerk
658 of the U. S. circuit court. Refiled in No. 21 Equity. C. B. Combe, ex'r, *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk.

Notice of Filing of Papers.

Filed July 12, 1887.

In U. S. Circuit Court, Western District of Texas, at Brownsville.

HEIRS OF MIGUEL SALINAS *vs.* WILLIAM L. KELLOGG ET ALS. } 248.

Messrs. A. J. Evans, attorney for plaintiff, R. Kleberg, for the United States, W. H. Mason, attorney for Mrs. Miller and others, Wells & Hicks, for the Powers heirs and others, and H. E. Woodhouse, for himself, and James R. Cox, for Pedro G. Cavazos, will please take notice that we have filed the following instruments in this cause, and will use the same in evidence on the trial hereof.

1. Deed from Miguel Salinas to Charles Stillman, for a piece (or labor) of land adjoining the labor of D. Dorotero Zamora, together with translation of same. Deed dated 12th of June, 1848.

2nd. Copy of deed from Miguel Salinas to Charles Stillman for twelve 53–100 acres out of labor, dated December 6th, 1848.

3rd. Certified copy of deed from Maria Josefa Cavazos to Charles Stillman for an undivided half of the garrison grounds, etc., dated 25th of March, 1875.

4th. Certified copy of deed from Isabel G. Stillman, Clara S. Stillman, Bessie G. Stillman, and Charles Stillman, heirs at law of Charles Stillman, to James Stillman, for the undivided half of the garrison lands dated March 9th, 1885.

5th. Certified copy of the will of Dona Francisca Cavazos and translation thereof.

659

BALLINGER, MOTT & TERRY,
JAMES R. COX,
Attorneys for James Stillman and Thomas Carson, Administrator.

Endorsed: No. 248. In the circuit court of the United States, in and for the western district of Texas, at Brownsville. Heirs of Miguel Salinas *vs.* William L. Kellogg, *et al.* Notice of filing papers. Filed July 12, 1887. Charles F. Tighlman, clerk. Refiled in 21 Equity, C. B. Combe, ex'r, *vs.* James Stillman, *et al.* Filed July 15, 1897. D. H. Hart, clerk.

Order of the Court Granting Motion of the United States to Make Parties.

Entered Jan'y 6th, 1887.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG. } No. 248.

This day coming on to be heard the motion of Rud Kleberg, U. S. dist. attorney, praying that certain persons named in said motion be made parties defendant in this cause. It is therefore considered by the court that the said motion be granted and that the clerk of this court issue citation as the law directs to each of the persons named in the said motion.

Order Granting H. E. Woodhouse, Intervenor, Leave to Amend.

Entered July 14th, 1887.

HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG. } No. 248.

Ordered that intervenor, H. E. Woodhouse, has leave to amend.

660 *Judgment.*

Entered July 14th, 1887.

HEIRS OF MIGUEL SALINAS
vs.
WM. L. KELLOGG ET ALS. } No. 248.

On this day this cause came on to be heard, and the plaintiffs Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas and Juan Salinas, came not either in person or by attorney, and thereupon the cause was heard upon the pleas in reconvention of James Stillman, Pedro G. Cavazos, Thomas Carson, administrator with the will annexed of Maria Josefa Cavazos, H. E. Woodhouse, B. O. Hicks, guardian of the estate of Frances E. Powers, a minor, Annette P. Hicks and her husband B. O. Hicks, Agnes A. Brown and her husband James A. Brown, Kate M. Combe and her husband Charles B. Combe, Marie Grogan,

Dana and her husband Charles S. Dana, B. O. Hicks and Charles B. Combe, executors of Stephen Powers, deceased, R. D. Hinojosa, Francisca Yturria, Matt Gerhard, Andrea Salinas, Felicita Salinas, Mrs. Charlotte Miller and Henry Miller, who appeared by their respective attorneys, and the United States by Rudolph Kleberg, Esq., her attorney, and William L. Kellogg, by his attorney, and announced themselves ready for trial. And thereupon came a jury of twelve good and lawful men of the western district of Texas, towit: Frank Lusena, George Turner, Alexander Stiger, Martin Hanson, Valentine Gavito, Aaron Turk, John T. Criss, James Conner, Jacob Porter, Sam A. Belden, Gustav Schultz and Peter Simons, who being duly elected, tried, empaneled and sworn to try this cause, and who having heard the pleadings, evidence, argument of counsel and charge of the court, returned into open court the following verdict, towit:

"HEIRS OF MIGUEL SALINAS
vs.
WILLIAM L. KELLOGG ET AL. } No. 248.

661 We, the jury, find for the defendants in reconvention, James Stillman and Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, in the proportion of one undivided one-half each, the property claimed by their pleas in reconvention herein.

FRANK LUSENA, *Foreman.*

Brownsville, Texas, Cameron county, July 14th, 1887."

Wherefore, it is considered by the court that the plaintiffs, Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Juan Salinas, take nothing by their suit and go hence without day, and that the said reconvening defendants Pedro G. Cavazos, H. E. Woodhouse, Maria Grogan Dana and her husband, Charles S. Dana, B. O. Hicks, guardian of the estate of Frances E. Powers, B. O. Hicks and Charles B. Combe, executors of Stephen Powers, deceased, Annette B. Hicks and her husband B. O. Hicks, Agenes A. Brown and her husband James A. Brown, Kate M. Combe and her husband Charles B. Combe, Mrs. Charlotte Miller, Henry Miller, Francisco Yturria, R. D. Hinojosa, Andrea Salinas, Felicita Salinas and Mat Gerhard, take nothing by their pleas in reconvention herein and that they go hence without day.

It is further ordered, adjudged and decreed that James Stillman and Thomas Carson, administrator of the estate of Maria Josefa Cavazos, have and recover in equal moi-ties the following described Fort Brown property, which property is now described as follows:

"Beginning at a point on the left bank of the Rio Grande river, adjoining the city of Brownsville, where a line in the center of

Fourteenth (14th) street of said city, moving southwestwardly strikes the said river, thence north 57.25 degrees east on a line moving 30 feet west of the quartermaster's wall now there standing (2000) two thousand feet to the center of Monroe street in said city, intersecting the city limits of Brownsville; thence south 61 degrees east
662 (3450) three thousand four hundred and fifty feet to a mesquite post set for a corner; thence south 30 degrees east (950) nine hundred *a* fifty feet to low water mark of the river; thence up the said river at low water mark as the same winds and turns, about fifteen thousand (15000) feet to the place of beginning, containing about three hundred and fifty-eight and eight-tenths acres of land, be the same more or less; the whole thereof being now and for many years past in the actual and exclusive possession and occupation of the United States as a military reservation."

It is further ordered, adjudged and decreed that all right, title and interest in and to the foregoing premises and property be divested from and out of H. E. Woodhouse, the estate of Frances E. Powers, a minor, the estate of Stephen Powers, deceased, Frances E. Powers, B. O. Hicks, guardian aforesaid, B. O. Hicks and Charles B. Combe, executors aforesaid, Marie Grogan Dana and her husband Charles S. Dana, Annette P. Hicks and her husband B. O. Hicks, Kate M. Combe and her husband Charles B. Combe, Agnes A. Brown and her husband James A. Brown, Mrs. Charlotte Miller, Henry Miller, Pedro G. Cavazos; Francisca Yturria, Mat Gerhard, Vicente Salinas, Juan Salinas, R. D. Hinojosa, Leocadio Salinas, Antonio Salinas? Bernardo Salinas, Higinio Salinas, Jose Maria Salinas, Vicenta Salinas, Juan Salinas, William L. Kellogg and the United States, and vested in the said James Stillman and Thomas Carson, as administrator with the will annexed of Maria Josefa Cavazos, in equal moi-ties.

It is further ordered, adjudged and decreed that the said defendants, James Stillman and Thomas Carson, administrator, etc., as aforesaid, are also well entitled to have and recover all rents, issues and profits, interest claims and dues for use and occupation of said premises from the year 1846 down to this day; the said defendants are also to pay to the officers of this court all costs and fees incurred in this action.

Decree.

Entered July 15th, 1897.

663 C. B. COMBE, Ex'r of Stephen -ers, Deceased,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Suit pending in the United States circuit court for the western district of Texas, at Brownsville, Texas.

Be it remembered that on the 15th day of July, 1897, in open court at Austin, Texas, came on to be heard the motion and application of plaintiff herein for the appointment of a receiver and for the issuance of a preliminary writ of injunction upon plaintiff's bill, motion, proof of service of notice of said motion, the response of the defendant Carson, individually, and as administrator, to said motion and the record in suit No. 248 on the law docket of said court at Brownsville; and defendant James Stillman not appearing and the court having heard argument of counsel, and being advised of all matters of fact and of law, arising upon said motion and application and of the response thereto, is of the opinion that the court has jurisdiction of this cause as being a suit ancillary to said cause No. 248 on the law docket of this court, and is therefore of opinion that the same should be sustained.

It is therefore, ordered, adjudged and decreed by the court that the said application of plaintiff, C. B. Combe, for the appointment of a receiver, and for preliminary writs of injunction herein be and the same is hereby sustained.

It is further ordered, adjudged and decreed by the court that S. J. Brooks be and he is hereby appointed receiver in this cause, but before entering upon his duties he shall execute bond, with two good and sufficient sureties, in the penalty of one thousand dollars, to be hereafter increased, according to circumstances, conditioned and payable according to law, said bond to be approved by the clerk of this court, or any lawfully constituted deputy; and shall take and file in writing an oath, that he will discharge his duties as receiver according to law and the directions of the court.

664 It is further ordered, adjudged and decreed by the court that the said S. J. Brooks, receiver, when he shall have qualified as hereinabove directed, be and he is hereby authorized to bring such suits as he may be advised by his counsel and ordered by the court, for the purpose of recovering the one hundred and sixty thousand dollars, alleged in plaintiff's bill of complaint to have been collected from the Government of the United States as the purchase money and compensation for Fort Brown reservation, and for the use

and occupation thereof from the date of its seizure down to the time said money was paid over to said defendants.

It is further ordered, adjudged and decreed by the court that the said Thomas Carson in his own right and as administrator with the will annexed of Maria Josefa Cavazos, and the said James Stillman, their agents, attorneys, solicitors and counsel be and they are hereby restrained and enjoined from using the judgment rendered on the 14th day of July, 1887, in suit No. 248, Heirs of Miguel Salinas *vs.* William Kellogg, *et al.*, on the law docket of this court at Brownsville, Texas, for the purpose of depriving plaintiff and the other defendants to this suit of their interest in said fund of one hundred and sixty thousand dollars, and from refusing to pay said fund into the hands of said receiver, and from refusing to account to this court for the same.

It is further ordered, adjudged and decreed that preliminary writs of injunction do issue out of this court in accordance with the above order, and be served on the defendant Carson, as administrator and individually by the marshal of the western district of Texas, and upon the said defendant Stillman by the marshal of the southern district of New York.

It is further ordered, adjudged and decreed that a writ of execution in chancery do issue out of this court to the marshal of the western district of Texas, commanding him to serve this order upon the said defendant Carson, as administrator, and individually, and also to the marshal of the southern district of the State of New York, commanding him to serve this order upon the said defendant James Stillman.

665 To all of which said order, judgment and decree the defendant Thomas Carson, administrator, and individually, excepted, and in open court prayed an appeal therefrom to the United States circuit court of appeals for the fifth circuit, sitting at New Orleans, La., which appeal is hereby granted him individually and as such administrator. And all further proceedings herein be stayed until the determination of this appeal, except the issuance and service of process. Appeal bond is fixed at $500.00.

It is further ordered that this order be entered upon the minutes of the court at Austin and then transmitted to Brownsville for record there, which is hereby ordered to be done.

Ordered, adjudged and decreed in open court at Austin, Texas, this July 15th, 1897.

T. S. MAXEY, *Judge.*

Agreement as to Filing of Assignment of Errors.

Filed July 15th, 1897.

In the Circuit Court U. S. in and for West. Dist. of Texas.

COMBE, Ex'r,
vs.
STILLMAN ET AL.

In the matter of the appeal from the interlocutory order of the court herein rendered on this the 15th day of July, 1897, granting an injunction and appointing a receiver, it is agreed as follows:

1st. That Carson individually and as administrator may file his assignment of errors herein as of this day at any time within the next ten days.

666 2nd. That the judge of this court or Judge T. S. Maxey, sitting, may approve any bond or bonds to be filed herein, and sign any orders, citation or other process necessary to perfect said appeal in any place where he may be, whether in or out of this Federal district at the time same may be presented for (approved) or signature to him, within the time allowed by law for perfecting this appeal.

Witness our signatures this the 15th day of July, 1897.

W. N. PARKS,
C. L. BATES,
Counsel for Plaintiff, C. B. Combe.
FRANKLIN & COBBS,
DUVAL WEST,
Counsel for Carson, and Carson, Administrator.

Endorsed: No. 21 Equity. Combe, ex'r, *vs.* Stillman *et al.* Agreement as to filing assignment of errors, etc. Filed July 15th, 1897. D. H. Hart, clerk.

Assignment of Errors.

Filed July 15th, 1897.

C. B. COMBE, Ex'r,
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

In the matter of appeal in the above styled and numbered cause by Thomas Carson, individually and as the administrator of the estate of Maria Josefa Cavazos from the interlocutory order and de-

cree entered in the above cause on the 15th day of July, 1897, appointing a receiver and granting an injunction, comes said Thomas Carson, individually, and as such administrator, by his counsel herein, and shows that in the record and the proceedings in the above-titled matter there is manifest error, which he assigns as follows, to-wit:

First.

667 1st. It appears from the face of complainant's bill that he is a resident of the State of Texas, and that Thomas Carson and other defendants are resident citizens of the State of Texas, and that James Stillman and some of the other defendants are resident citizens of other States, and there is no such diversity of citizenship as to give this court jurisdiction of this suit.

2. It appears upon the face of complainant's bill that same is an original bill and that this proceeding is an independent suit and there being no diversity of citizenship of parties, this court has no jurisdiction.

3rd. That it appears upon the face of complainant's bill that the same is in nowise dependent upon or ancillary to the suit No. 248, entitled Heirs of Migual Salinas, *vs.* William L. Kellogg, formerly pending in the circuit court of the United States for the western district of Texas, and that, therefore, this court has no jurisdiction to entertain the matters complained of in said bill as dependent or ancillary to said suit of Salinas *vs.* Kellogg, it being apparent upon the face that the said suit of Salinas *vs.* Kellogg has long since been finally disposed of by judgment duly rendered, and that said judgment has been in all things executed, and that if complainant is entitled to any relief in the premises it is necessarily through an independent original bill in chancery or a suit at law.

4th. It appears from the face of said bill, and the proof had upon the hearing, that no jurisdiction over the person of the defendant had been obtained by due and proper service of process at the time of said hearing, even if complainant's bill should be treated as a dependent or ancillary bill.

Second.

The court erred in granting the injunction herein as granted by said interlocutory order or decree, and appointing a receiver herein as appointed by said interlocutory order or decree, because it is apparent upon the face of the bill, and the proof had upon the hearing that no service of any proper process was had upon the
668 defendants named in said bill and that none of said defendants were before the court by any character of appearance, except the appellant herein, and that there was no fund within the custody of the court or its jurisdiction upon which its said interlocutory order could in any way operate, and because it is apparent upon the face of said bill and the record in the case that the de-

fendant Carson is not now in possession of the fund referred to in complainant's bill and has never been in possession thereof, and that said fund, if any exists, is in the possession of one James Stillman, a resident citizen of New York, in the State of New York, and beyond the juri-diction of this court.

Third.

The court erred in granting the injunction herein granted in its interlocutory order, because it nowhere appears in complainant's bill, or in any of the proof had upon the hearing that the defendants Carson, either individually or as administrator, is in any wise using the said judgment in the case of Salin-s *vs.* Kellogg for the purpose of misappropriating, withholding, or in any manner controlling the fund referred to in complainnt's bill.

Fourth.

The court erred in granting said injunction and appointing said receiver, becaise it is apparent upon the face of complainant's bill that there is no equity therein, and that if he has any right of action whatsoever to recover any portion of the fund referred to in said bill that his remedy at law is ample and adequate.

THOMAS H. FRANKLIN,
DUVAL WEST,
Counsel for Defendant Thomas Carson, Administrator, etc., and for Thomas Carson, Individually.

Endorsed: No. 21. Equity. In the circuit court of the United,—, in and for the western district of Texas, at Brownsville. C. B. Combe, ex'r, *vs.* James Stillman and Thomas Carson, administrator, *et al.* Assignment of errors. Filed July 15th, 1897. D. H. Hart, clerk.

669

Appeal Bond.

Filed August 5th, 1897.

C. B. COMBE, Ex'r,
vs.
JAMES STILL- and THOMAS CARSON, Administrator, *et al.*
No. 21. In Equity.

Whereas heretofore, to wit, on the 15th day of July, A. D. 1897, the complainant, C. B. Combe, executor, etc., applied to the judge of the circuit court of the United States, in and for the western district of Texas, for the appointment of a receiver of a certain fund of one hundred and sixty thousand dollars, alleged to be in the hands of

the said defendants, James Stillman and Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and Thomas Carson, individually, and to require the said named defendants to pay over said fund to said receiver, or to pay the same into the registry of the court; and for the issuance of preliminary writs of injunction as prayed for in complainant's bill to enjoin the said named defendants from making fraudulent use of a certain judgment of law of said circuit court, rendered on July 14, 1887, in a certain cause in said court at Brownsville division thereof, styled The Heirs of Miguel Salinas *vs.* Wm. Kellogg, *et al.*, No. 248 on the law docket of said court, and upon a hearing of said application, the court granted the writ of injunction by the issuance of the following order.

C. B. COMBE, Executor of Stephen Powers, Deceased,
vs.
JAMES STILLMAN ET AL.
} No. 21. In Equity.

Suit pending in the United States circuit court for the western district of Texas, at Brownsville, Texas.

670 Be it remembered that on this the 15th day of July, A. D. 1897, in open court, at Austin, Texas, came on to be heard the motion and application of plaintiff herein for the appointment of a receiver and for the issuance of a preliminary writ of injunction upon plaintiff's bill, motion proof of service of notice of said motion, the response of the defendant Carson, as administrator and individually to said motion, and the record in suit No. 248 on the law docket of said court at Brownsville, and the defendant James Stillman not appearing, and the court having heard argument of counsel and being advised of all matters of fact and of law arising upon said motion and application, and of the response thereto, is of opinion that the court has jurisdiction of this cause, as being a suit ancillary to said cause No. 248 on the law docket of this court, and is therefore of opinion that the same should be sustained;

It is, therefore, ordered, adjudged and decreed by the court that the application of plaintiff, C. B. Combe, for the appointment of a receiver, and for preliminary writs of injunction herein, be and the same is hereby sustained.

It is further ordered, adjudged and decreed by the court that S. J. Brooks be and he is hereby appointed receiver in this cause, but before entering upon his duties he shall execute bond, with two good and sufficient sureties, in the penalty of one thousand dollars, to be hereafter increased, according to circumstances, conditioned and payable according to law, said bond to be approved by the clerk of this court or any lawfully constituted deputy, and shall take and file in writing an oath that he will discharge his duty as receiver according to law and the directions of the court.

It is further ordered, adjudged and decreed by the court that the said S. J. Brooks, receiver, when he shall have qualified as hereinabove directed be and he is hereby authorized to bring such suit as he may be advised by his counsel and ordered by the court, for the purpose of recovering the one hundred and sixty thousand dollars alleged in plaintiff's bill of complaint to have been collected from the Government of the United States as the purchase money
671 and compensation for Fort Brown reservation, and for the use and occupation thereof from the date of its seizure down to the time said money was paid over to said defendants.

It is further ordered, adjudged and decreed by the court that the said Thomas Carson, in his own right, and as administrator with the will annexed of Maria Josefa Cavazos, and the said James Stillman, their agents, attorneys, solicitors and counsel be, and they are hereby restrained and enjoined from using the judgment rendered on the 14th day of July, A. D. 1887, in suit No. 248, Heirs of Miguel Salinas *vs.* William Kellogg, *et al.*, on the law docket of this court at Brownsville, Texas, for the purpose of depriving plaintiff and the other defendants to this suit of their interest in said fund of one hundred and sixty thousand dollars, and from refusing to pay said fund into the hands of said receiver, and from refusing to account to this court for the same.

It is further ordered, adjudged and decreed that preliminary writs of injunction do issue out of this court in accordance with the above order, and be served on the defendant Carson as administrator and individually by the marshal of the western district of Texas, and upon the said defendant Stillman by the marshal of the southern district of the State of New York.

It is further ordered, adjudged and decreed that a writ of execution in chancery do issue out of this court to the marshal of the western district of Texas, commanding him to serve this order upon the said defendant Carson, as administrator and individually and also to the marshal of the southern district of the State of New York, commanding him to serve this order upon the said defendant James Stillman.

To all of which said order, judgment and decree the defendant Thomas Carson, administrator and individually, excepted and in open court prayed an appeal therefrom to the United States circuit court of appeals, for the fifth circuit, sitting at New Orleans, La., which appeal is hereby granted him individually and as such administrator.

And all further proceedings herein be stayed until the de-
672 termination of this appeal, except the issuance and service of process. Appeal bond is fixed at $500.00.

It is further ordered that this order be entered upon the minutes of the court at Austin, and then be transmitted to Brownsville for record there, which is hereby ordered to be done.

Ordered, adjudged and decreed in open court at Austin, Texas, this July 15, 1897.

T. S. MAXEY, *Judge.*"

From which order granting injunction the said defendant Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased and for himself individually, applied for and was granted an appeal to the United States circuit court of appeals at New Orleans, La., on condition that the said Carson, administrator and individually, should execute a bond in the sum of $500.00 conditioned as provided by law.

Therefore, know all men by these presents, that I, Thomas Carson, administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased, and in my individual capacity as principal, and William Kelly and Robert Dalzell, as sureties, acknowledge ourselves bound to pay to C. B. Combe, executor of the estate of Stephen Powers, deceased, the sum of five hundred dollars, the payment thereof we firmly bind ourselves, our heirs, executors and administrators, conditioned that the said appellant shall prosecute his appeal to effect, and if he shall fail to make his appeal good shall answer all costs.

In testimony whereof, witness our hands this 23rd day of July, A. D. 1897.

THOMAS CARSON,
Administrator with the Will Annexed of the Estate of Maria Josefa Cavazos, Deceased.
THOMAS CARSON.
WILLIAM KELLY.
ROBERT DALZELL.

673 Approved this 23rd day of July, A. D. 1897.
[SEAL.] D. H. HART,
Clerk U. S. Circuit Court,
By CHARLES F. TIGHLMAN, *Deputy.*

The foregoing bond is approved July 30th, 1897.
T. S. NAXEY, *Judge.*

Endorsed: No. 21 Equity. In the circuit court of the United States in and for the western district of Texas at Brownsville. C. B. Combe, adm'r. *vs.* James Stillman, *et al.* Appeal bond. Filed August 5th, 1897. D. H. Hart, clerk.

THE UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

The President of the United States to C. B. Combe, independent executor of the last will and testament of Stephen Powers, deceased, Greeting:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals, for the fifth circuit at New Orleans, La., within thirty days from the date thereof, pursuant to

an appeal sued out and filed in the clerk's office of the circuit court of the United States for the western district of Texas, in the case wherein Thomas Carson, for himself and as administrator with the will annexed of the estate of Maria Josefa Cavazos, deceased is appellant, and the said C. B. Combe, executor of the last will and testament of Stephen Powers, deceased, is respondent, to show cause, if any there be, why the interlocutory order and injunction issued against said appellant on July 15th, 1897, in said cause, should not be corrected, and speedy justice should not be done to the parties in that behalf.

674 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 30th day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

Attest:

D. H. HART, *Clerk.*

Signed this the 30th day of July, 1897.

[SEAL.]

T. S. MAXEY,
United States Judge.

Endorsed: No. 21. Equity. Thomas Carson, administrator, etc., appellant, *vs.* C. B. Combe, ex'r, etc., appellee. Citation, Marshal's return: I hereby acknowledge service of the within citation. C. L. Bates, counsel for appellee. C. B. Combe, executor, etc. Filed August 5th, 1897. D. H. Hart, clerk.

Clerk's Certificate.

I, D. H. Hart, clerk of the circuit court of the United States, in and for the western district of Texas, hereby certify that the foregoing on 127 pages and a fraction of a page, contains a true and correct copy of the proceedings had (as therein stated) in cause No. 21 equity, C. B. Combe, executor of Stephen Powers, deceased, *vs.* James Stillman, *et al.*, except that the original citation is included therein instead of a copy thereof, as fully as the same remains on file and of record in my office at Brownsville, Texas.

Witness my hand and the seal of the circuit court, at office in the city of Brownsville, Texas, this the 23rd day of August, A. D. 1897.

D. H. HART, *Clerk,*

[SEAL.] By CHARLES F. TIGHLMAN, *Deputy.*

675 *Order of the Probate Court Authorizing Thomas Carson, Administrator, to Settle Fort Brown Claim.*

In the Matter of the Estate of MARIA JOSEFA CAVAZOS, Deceased; THOMAS CARSON, Administrator. No. 45.

And now on this 17th day of August, A. D. 1885, being a regular day of this term for the transaction of probate business, this estate

was reached and called in the regular order upon the docket, and thereupon came on to be heard the petition of Thomas Carson, administrator, herein, for an order of the court authorizing and empowering him as such administrator to compromise and settle the disputes and litigation now existing and pending concerning the interest owned and held by the said Maria Josefa Cavazos in her lifetime, in and to the Fort Brown reservation, Texas; and the rents for the use and occupancy thereof by the United States, and to adjust, compromise and settle with the United States, the claims of said estate for the value of the land belonging to the said estate, embraced within said Fort Brown reservation, and for rents due for the use and occupancy thereof. And thereupon came Thomas Carson the said administrator in person and by attorney, and the court proceeded to hear said matters; and it being shown to the entire satisfaction of the court that the said estate of Maria Josefa Cavazos is the owner of a large portion of the Fort Brown reservation, Texas, and that the quantity of land belonging to the said estate is unascertained, by reason of the pendency of a suit in partition between the co-owners of the middle third of the Espiritu Santo tract of land, upon which said Fort Brown reservation is situated; and also that there are conflicting claims to a portion of said Fort Brown reservation, between the heirs and assigns of Miguel Salinas and the administrator herein, as such, to determine which a suit is now pend-
676 ing in the circuit court of the United States for the western district of Texas; and it being further shown to the entire satisfaction of the court that an appropriation has been made by the Congress of the United States, at the last session thereof, of one hundred and sixty thousand (160,000) dollars, to enable the Secretary of War to acquire for the United States a good and valid title to the Fort Brown reservation, Texas, and to pay the owners thereof for the use and occupancy thereof by the United States; and it being further shown to the satisfaction of the court that there is no prospect of a speedy termination of the litigation now pending between the co-owners and claimants of said Fort Brown reservation, unless a compromise is had, and further that the said co-owners and claimants are willing to unite with the administrator herein in adjusting all the disputes concerning their claims and to make to the United States a good and valid title to said Fort Brown reservation, and full acquittances and releases for all rents due for its use and occupancy by the United States;

And it being further shown to the entire satisfaction of the court that the acceptance and carrying into effect of said compromise will be in every respect greatly for the interests of this estate, and that all of the facts set out in said petition are true and that said petition is in due form of law, it is, therefore, in consideration of the premises now here, by the court ordered, adjudged and decreed, that the said petition and application herein, and the prayer thereto be and they are now hereby in all things granted and allowed, and the said administrator in all things fully ordered, authorized, empowered

and directed as such, and for and in behalf of the estate of said Maria Josefa Cavazos, deceased, to unite with the other tenants in common and co-owners of said middle third of said Espiritu Santo tract of land, and with the other claimants to said Fort Brown reservation, in a sale of the land embraced in said Fort Brown reservation to the United States, and to make, execute and deliver to the said United States full and complete acquittances, released and
677 conveyances of all and singular the right, title and estate which he the said Thomas Carson now has and holds as administrator of the estate of Maria Josefa Cavazos, deceased, in and to the land embraced within the said Fort Brown reservation, and in and to all sums of money due by the United States as rents for the use and occupancy of the same.

And it is further ordered, adjudged and decreed that the administrator herein be and he now hereby is fully authorized and empowered, on behalf of said estate, to compromise, settle and agree with the other co-owners and claimants to said Fort Brown reservation all differences, controversies and suits concerning their respective rights therein, in order that long and expensive litigation may be avoided and the rights and interests of the said estate therein be fully established and settled, and to make, execute and deliver all such agreements and writings in that behalf as shall be requisite and necessary in the premises, and with such covenants as to the said administrator herein may seem most advantageous to said estate.

(This document is copied from a transcript of the records of Cameron county, Texas, certified to by the clerk of said county.)

678 *Deed from Maria Josefa Cavazos to Charles Slillman.*

Know all men by these presents, that I, Dna. Maria Josefa Cavazos, of Matamoros, Mexico, in consideration of the sum of one dollar to me in hand paid by Charles Stillman of New York, the receipt whereof is hereby confessed and acknowledged, have granted and sold and by these presents do grant, bargain, sell and convey to the said Charles Stillman, all my right, title and interest in the one undivided half part or moiety of the land included within the fence surrounding the garrison groun-s and Fort Brown, in Cameron county, Texas, including the old fort, the whole comprising about three hundred acres of land, more or less, after deducting these from the quantity agreed to be conveyed to the attorneys employed by me in Washington, in prosecuting my claim for compensation, and including in this conveyance and transfer the one-half of all rents, compensation for use and occupation or payments made or to be made for any portion, or for the use of the said land, or any part thereof, the said Charles Stillman to sustain the one-half part of all costs of prosecuting in courts my claims for compensation against the United States Government, and likewise one-half the costs to be

hereafter incurred in prosecuting in all courts my title to the lands in Cameron county, Texas, part of the Espiritu Santo grant owned by me under the last will of Dona Francisca Cavazos.

To have and to hold to the said Charles Stillman, with all appurtenances, rents, issues, and profits to him, his heirs and assigns forever.

Nothing herein contained shall apply to the tract of land conveyed by Basse & Hord in 1854, known as the site of Brownsville. It is understood that the costs and expenses of realizing and maintaining title of the garrison grounds are to be deducted from the avails when received, and are not to be collected or demanded by C. S. until the money is received or realized for the same.

Witness my hand and seal this 25th day of March, 1875.

Approved.

679 MARIA JOSEFA CAVAZOS. [L. S.]

REPUBLIC OF MEXICO,
State of Tamaulipas, City of Matamoros,
Consulate of the United States.

On this 25th day of March, 1875, personally came before me Mrs. Dona Maria Josefa Cavazos, of said city, to me known to be the same person within described, and who executed the foregoing instrument, and she duly acknowledged before me that she signed and executed and delivered the same for the uses, purposes and consideration therein expressed.

In witness whereof, I have hereunto affixed my signature [L. S.] and the seal of the consulate of the United States, at Matamoros, at my office in said city, this — day of March, A. D. 1875.

THOMAS F. WILSON, *Consul.*

77
Fees $2 & 1.

Filed for record at 10 o'clock a. m. March 23rd, A. D. 1885, and was duly recorded the same day.

ADOLPHUS GLAEVECKE,
Clk Co. Ct., Cam. Co., Texas.

THE STATE OF TEXAS,
County of Cameron.

I, Joseph Webb, clerk of the county court in and for Cameron county, Texas, do hereby certify that the above and foregoing two pages are a full, true and correct copy of an instrument of record in my office, in Book, supplemental records of said county, "F," pages numbers 676 and 677.

Witness my -- and seal of office, this 21st day of January, A. D. 1899.

[SEAL.]

680 JOSEPH WEBB,
Clerk County Court, Cameron County, Texas,
By HOWARD MILLER, *Deputy.*

(10 cent documentary stamp, cancelled.)

Endorsed: Eq. 21. Certified copy. Maria Josefa Cavazos to Charles Stillman. Garrison grounds. Offered in evidence by defendant Stillman. Filed May 21, 1903. C. Dart, clerk, by R. B. Creager, deputy.

681 *Deed from Isabel G. Stillman and Others to James Stillman.*

This indenture made this ninth day of March in the year of our Lord one thousand eight hundred and eighty-five, between Isabel G. Stillman, Clara F. Stillman, Bessie G. Stillman and Charles Stillman, heirs at law (with James Stillman) of Charles Stillman, deceased, of the first part, and James Stillman of the city of New York of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of one hundred dollars ($100.00) to them duly paid, have sold and by these presents do grant and convey to the said party of the second part, his heirs and assigns forever, all their right, title and interest in the undivided half of all that tract or parcel of land situate in the county of Cameron and State of Texas, known as the military reservation of Fort Brown, bounded west by the brick wall and fences from the city of Brownsville, and on the south and east by the Rio Grande river; the said premises have been for many years and are at present in the actual occupancy of the military forces of the United States, known as Fort Brown, and consists of about three hundred and fifty (350) acres of land, be the same more or less.

Whereas the said premises were the private property of Mrs. Maria Josefa Cavazos, of the city of Matamoros, Mexico, for many years; and on or about the 25th day of March, 1875, by deed dated and duly executed and delivered on that day, she the said Maria Josefa Cavazos duly granted and conveyed the one undivided half part or moiety thereof to Charles Stillman, the father of these parties, who afterwards departed this life on or about the 18th day of December, 1875, at the city of New York, leaving the parties hereto his sole heirs at law:

Now, therefore, to facilitate the transfer thereof to the United States Government, this deed is executed with the appurtenances and all the estate, title and interest therein of the said party
682 of the first part. And the said Isabel Stillman and others; jointly and severally as to their own acts or sufferances do hereby covenant and agree to and with the said party of the second

part, his heirs and assigns, that the premises thus conveyed in the quiet and peaceable possession of the said party of the second part, his heirs and assigns they will forever warrant and defend against any person whomsoever lawfully claiming the same, or any part thereof, through or by reason of any claim or lien whatever against them or either of them.

In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

ISABEL G. STILLMAN. [L. S.]
CLARA F. STILLMAN. [L. S.]
BESSIE G. STILLMAN. [L. S.]
CHARLES STILLMAN. [L. S.]

Sealed and delivered in the presence of
GEORGE L. STERLING.

STATE OF NEW YORK,
County of New York, City of New York, } ss:

On this fourteenth day of March, in the year one thousand eight hundred and eighty-five before me, the subscriber, personally appeared Isabel G. Stillman, Clara F. Stillman, Bessie G. Stillman and Charles Stillman, to me personally known to be the persons described in and who executed the within instrument and severally acknowledged that they executed the same.

[L. S.] GEORGE L. STERLING,
Notary Public (35), *New York County.*

683 Filed for record at six o'clock p. m., March 25th, A. D., 1885, and was duly recorded March 26th, A. D. 1885.

ADOLPHUS GLAEVECKE,
Cl'k Co. Ct., Cam. Co., Texas.

THE STATE OF TEXAS,
County of Cameron. }

I, Adolpphus Glaevecke, clerk of the county court, in and for Cameron county, Texas, do hereby certify that the foregoing is a full, true and correct copy of the original, as taken from Book "F," pages 677 & 678. sup. record real estate of Cameron county, Texas.

Witness my hand and seal of said court, at office in the city of Brownsville, this the 26th day of March, A. D. 1885.

[L. S.] ADOLPHUS GLAEVECKE,
Cl'k Co. Ct., Cam. Co., Texas.

Endorsed: Eq. 21. Isabel G. Stillman and others to James Stillman. Copy of deed. Offered in evidence by complainant. Filed May 21, 1903. C. Dart, clerk, by R. B. Creager, deputy.

684 *Agreement Between Stillman and Others, Dated July 13th, 1887.*

The above described document is set out in full as Exhibit D to plaintiff's original bill; said original bill is to be found beginning at page — of this record.

685 *Exemplified Copies of Records from the War Department, Showing Collection of Fund and Payment to Stillman.*

The above described document is set out in full as Exhibits E and C to plaintiff's original bill; said original bill is to be found beginning at page — of this record.

686 *Correspondence of Attorney General.*

UNITED STATES OF AMERICA:

DEPARTMENT OF JUSTICE, *May 6th*, 1903.

Pursuant to the act of Congress of March 5th, 1872, I hereby certify that the annexed paper is a true copy of the original correspondence mentioned below as on file in this office,

Telegram, U. S. att'y Brownsville, Texas, to Attorney-General, July 11, 1887;

Letter of Attorney-General to U. S. attorney, July 15, 1887.

Letter from U. S. attorney to the Attorney-General, July 28, 1887.

In witness whereof, I have hereunto set my hand and [SEAL.] caused the seal of the Department of Justice to be affixed, on the day and year first above written.

H. M. HOYT,
Acting Attorney-General.

14 A. U. M. Jo. 80 collect Gov't rate.

1209 A.

BROWNSVILLE, TEXAS, 11 *July* 11, 1887.

Hon. A. H. Garland, Attorney General U. S., Wash'n, D. C.:

In case of Salinas Heirs against William Kellogg, involving Fort Brown reservation all parties claiming title are in court and the Government also by pleas proposition of claimants is to enter agreed judgment vesting title in Government and decreeing that
687 appropriation be paid into registry of court subject to arbitration or partition by court hereafter among claimants I believe good title can thus be made answer instructions.

RUD. KLEBURG, *U. S. Att'y.*

JULY 15 7

Rudolph Kleberg, Esq., U. S. attorney, Brownsville, Texas.

SIR: The proposition contained in your telegram of the 11th inst. touching the case of Salinas Heirs *vs.* Kellogg, being a subject proper for the consideration of the Secretary of War rather than the Attorney-General, it has been referred to the War Department with a letter of this date. Before giving you instructions in regard thereto, I shall await a response from the Secretary of War.

I am, sir, very respectfully,

A. H. GARLAND,
Attorney-General.

Office of Rudolph Kleberg, U. S. attorney, western district of Texas.

CUERO, TEXAS, *July* 26, 1887.

Hon. A. H. Garland, Att'y Gen. U. S.:

688 SIR: I have the honor to report that agreeably to your instructions of September 14, 1886, I appeared in behalf of defendant and in the interest of the United States in cause of the Heirs of Miguel Salinas *vs.* William Kellogg. I had the cause removed into the U. S. circuit court at Brownsville, Texas. I then had all persons whom you named as being necessary to join in conveyance to United States, made parties defendant.

At the July term, 1887, just closed all parties were legally in court and defendants all answered—plaintiffs however did not appear. Def'ts announced ready for trial and the cause was submitted to a jury upon the pleadings and such evidence of title as was presented. The verdict and judgment vests title in James Stillman and Thomas Carson, adm'r, etc. A copy of judgment will in due time be presented to you together with deed from above defendants.

In my opinion this deed will be good and vest good title in the United States as the claims of all persons which you mention in your opinion have been adjudicated.

Very respectfully, RUD. KLEBERG, *U. S. Att'y.*

Endorsed: Eq. 21. Offered in evidence by complainant. Filed May 20, 1903. C. Dart, clerk.

689 *Correspondence of Secretary of War.*

UNITED STATES OF AMERICA:

DEPARTMENT OF JUSTICE, *February* 16*th*, 1903.

Pursuant to the act of Congress of February 22, 1849, I hereby certify that the annexed paper is a true copy of the original letter and opinion, as on file in this office.

Letter to the Secretary of War, dated July 19, 1887;

Opinion to the Secretary of War, dated December 22, 1887.

In witness whereof, I have hereunto set my hand, and caused the seal of the Department of Justice to be affixed, on the day and year first above written.

[SEAL.]

P. C. KNOX,
Attorney General.

WAR DEPARTMENT,
WASHINGTON CITY, *July* 19, 1887.

SIR: I have the honor to acknowledge the receipt of your letter of the 15th inst., referring to a copy of a telegram from the U. S. attorney for the western district of Texas, stating that in the case of the Heirs of Miguel Salinas against the United States all the parties claiming title to the Fort Brown military reservation, or any part thereof, are ready to answer agreed judgment vesting title to said reservation in the Government, upon payment to them of the amount appropriated under the act of March 3, 1885, for the acquisition of the premises.

In reply I beg to state that this department has no means of ascertaining the validity of the title to the property in question, and, therefore, the amount appropriated for the purchase can only be paid when I am advised by you that the title is good and
690 valid.

Very respectfully, your obedient servant,

WM. C. ENDICOTT,
Secretary of War.

The honorable the Attorney General.

9292 / 85.

DEPARTMENT OF JUSTICE,
WASHINGTON, *December* 22, 1887.

The Secretary of War.

SIR: I herewith return all the papers which were transmitted to me by your department under cover of letters dated the 1st and 4th of October, 1887, relating to the proposed transfer to the United States of title to the tract of land (said to contain about 358 acres) known as the Fort Brown military reservation, situated in Cameron county, Texas. Accompanying them are also some additional papers since filed in this department, which relate to the same matter.

Among the papers first above referred to is a deed dated September 17th, 1887, executed by James Stillman, of New York, and Thomas Carson, of Brownsville, Texas, administrator with the will annexed of Maria Josefa Cavazos, deceased, granting to the United States the whole of said tract; and in one of the aforesaid letters request is made for an opinion as to whether such deed is sufficient to vest the title to the premises in the United States.

I had occasion to consider the title to this property in two opinions heretofore addressed to you, dated respectively January 16, 1886 and May 20, 1886. The result there arrived at was, that a part of

the premises (which is sued for a national cemetery) containing about twenty-five acres, already belongs to the United States,
691 the same having been acquired by condemnation proceedings instituted in 1872, under the act of Congress of February 22, 1867, chap. 61, and that to acquire a valid title to the remainder of the premises, by voluntary transfer, deeds from a number of persons mentioned, including both the grantors in the aforesaid deed, would be necessary, in view of the existence of adverse claims of ownership by them involving disputed questions of fact which could not be satisfactorily determined without a judicial investigation.

Subsequently all these persons became parties to a suit in trespass to try title, which was originally instituted in the district court for Cameron county, Texas, in June, 1886, by the Heirs of Miguel Salinas against William L. Kellogg, an officer of the army then on duty at Fort Brown as post commander, and which was afterwards, on application of the United States attorney for the western district of Texas, (who appeared for said Kellogg under instructions from this department), removed into the United States circuit court for said district, where such of the persons above referred to as were not plaintiffs were brought into the suit as defendants; and a trial was had in the latter court in July, 1887.

The record of the proceedings therein shows that the cause was heard upon pleas in reconvention filed by the different defendants; that the jury found in favor of two of the latter, namely, the said James Stillman and the said Thomas Carson, administrator, etc., of Maria Josefa Cavazos, deceased, for the property claimed by their pleas in reconvention, in the proportion of one undivided half of the premises to each, and that the court thereupon adjudged that they recover the premises in equal moieties; together with the rents and dues for the past use and occupation thereof.

It is understood that all the parties to the suit acquiesced in this judgment; so that the controversy over the ownership of the premises and the right to the issues and profits thereof, previously existing between them, may now be regarded as judicially determined in favor of the grantors in the deed in question, and their title fully established as against the other litigants.

692 But a cloud upon this title recently appeared, which was not cleared away by that judgment—it being a claim in behalf of persons who are not parties to said suit. In the latter part of June 1886, a certified copy of a deed from Rafael Garcia Cavazos, and Maria Josefa Cavazos, his wife, to Ebenezer Allen and William G. Hale, dated December 12, 1849, but not recorded until April 7, 1886, was transmitted to the Secretary of War, who subsequently sent it to this department. By this deed an undivided one-tenth interest in certain lands, including the premises (to all of which the said Maria Josefa Cavazos, under whom the said Stillman and Carson afterwards derived their title, then claimed the exclusive ownership), is granted to the said Allen and Hale. It appears that both the grantees are dead and that the entire interest of Allen in the

premises has devolved by testamentary disposition upon his widow Mrs. S. Josephine Allen, while the entire interest of Hale therein has passed by inheritance to his six surviving children, viz: William H., Frances J., Susan B., Luisa H., Alice S., and Richard K. Hale. To remove the cloud above a-verted to, deeds from Mrs. Allen and the Hale heirs have been obtained as follows:

(1.) A deed from S. Josephine Allen, by her attorney in fact Thomas Carson, to the United States, dated October 24, 1887, granting the premises, and releasing and discharging the United States from all claims and demands whatsoever for or in respect of the use and occupancy thereof. See deed accompanied by power of attorney herewith, marked A and B.

(2.) A similar deed from Frances J., Susan B., Luisa H., Alice S., and Richard K. Hale to the United States, dated November 15, 1887. See deed herewith marked C.

(3.) A similar deed from William H. Hale to Thomas Carson and James Stillman, dated December 3, 1887. See deed herewith marked D. This instrument was recorded in Cameron county, Texas, December 6th, 1887. In addition to these deeds a similar one has been executed by Thomas Carson in favor of the United States, dated December 12, 1887, (see deed marked E), the object of which is to convey to the Government such interest in the premises as
693 he may have acquired in his own right under the said deed of William H. Hale. The interest which James Stillman may have acquired under the same deed will pass on delivery of the deed made by him jointly with said Carson, as administrator, etc. In my judgment the deeds of the Hale heirs, together with that of Mrs. Allen, and also the deed of Carson, mentioned above, are sufficient to remove the cloud hereinbefore referred to.

As the deed of James Stillman and Thomas Carson, administrator, etc., dated September 17th, 1887, which accompanied your request for an opinion, only purports to convey the property described therein, and contained no release of claims for use and occupation, it does not fully meet the requirements of the act of March 3, 1885, chap. 360, in regard to such claims. The attention of the grantors being called to this, they have executed a new deed, dated October 14, 1887, conveying the same property to the United States, and also releasing and discharging the latter from all claims and demands whatsoever for the use and occupancy thereof. See deed herewith marked A A. This deed is offered by them in lieu of the other. I may here add, that by an order of the county court of Cameron county, made at its August term, 1885, Thomas Carson, as administrator, etc., was authorized, for and in behalf of the estate of said Maria Josefa Cavazos, deceased, "to unite with the other claimants to said Fort Brown reservation in a sale of the land embraced in said Fort Brown reservation to the United States, and to make, execute and deliver to the said United States full and complete acquittances, release- and conveyances of all and singular the right, title and estate which he, the said Thomas Carson, now has and

holds as administrator of the estate of Maria Josefa Cavazos, deceased, in and to the land embraced within said Fort Brown reservation, and in and to all sums of money due by the United States as rent for the use and occupancy of the same."

Upon the whole, I am of the opinion that the aforesaid deed of James Stillman and Thomas Carson, administrator, etc., dated
694 October 14, 1887, together with the said deeds of Mrs. Allen, the Hale heirs, and Thomas Carson, dated respectively October 24, November 15, and December 12, 1887, is sufficient to vest in the United States a good and valid title to the tract of land known as the Fort Brown reservation in Texas (excluding of course that part of the premises which already belongs to the Government, whereof mention is hereinbefore made) and also to extinguish all claims for the use and occupancy of said reservation by the United States.

This opinion assumes that the premises are now free from tax or other lien. Should the proposed transfer take place, it is advised that proper service therefor be made before the purchase money is paid over, the above mentioned deeds and power of attorney (marked A, B, C, E and A A) be in the meantime put on record.

In connection with the above matter, several communications were received from you, dated October 15, 1887, and November 3, 4, 5, and 7 1887, enclosing and calling my attention to a number of letters addressed to you by Mr. Pedro G. Cavazos; also a copy of a letter address to you by the Mexican minister, and a letter addressed to you by William Brady, Esq., of New York. Upon examination of these letters, however, I do not find that they in any manner affect the validity of the title to the property proposed to be conveyed.

Mr. Cavazos was a party defendant in said suit, and put in a plea in reconvention claiming title to an undivided one-half of the premises, etc., as executor and trustee under the will of his mother, Maria Josefa Cavazos, deceased. This claim was antagonized by the claim of Thomas Carson, as administrator with the will annexed of the estate of the said Maria Josefa Cavazos, which was also pleaded in reconvention. The verdict and judgment went against the former, and in favor of the latter claimant. The only interest which Mr. Cavazos has is that of a distributee in common with the other heirs of said Maria Josefa Cavazos, of the proceeds arising from the sale of the lands, and of the receipts for use and occupancy thereof; and it is not to be doubted that both his and their
695 rights will be adequately protected by the local court having jurisdiction of the administration and distribution of the said estate. This remark is applicable to the letter of the Mexican minister, which is in relation to the interests of the same heirs. The letter of Mr. Brady relates to a claim for his services as attorney for James Stillman and others, owners of the property aforesaid, and does not concern the title thereto.

A notice of such claim was also received here (which I transmit

herewith), wherein the claimant asserts a lien upon the fund appropriated for the purchase. There is no foundation for the lien asserted, nor has the claimant, as I conceive, any equitable interest in the fund which your department is bound to protect in the disbursement thereof.

Very respectfully,

A. H. GARLAND,
Attorney General.

Endorsed: Eq. 21. Offered in evidence by complainants. Filed May 20, 1903. C. Dart, clerk.

696 *Will and Codicil of Stephen Powers, Deceased.*

The above described document is set out in full as Exhibits A and B to plaintiff's original bill; said original bill is to be found beginning at page — of this record.

697 *Testimony of James R. Cox.*

In the United States Circuit Court in and for the Southern District of Texas, at Brownsville.

C. C. COMBE, Executor, etc., *vs.* JAMES STILLMAN ET AL. } No. 21. In Equity.

We hereby acknowledge receipt of a copy of the direct interrogatories propounded to J. A. Garver, Jas. R. Cox and James Stillman, witnesses for the defendants in the above numbered and styled cause, and we hereby waive time and notice and agree that without the issuance of commission, any notary public may take the answers of said witnesses to the accompanying direct and cross interrogatories and return said depositions to the clerk of the United States circuit court at Brownsville, Texas, by registered mail, waiving all formalities as to manner of returning said depositions.

C. L. BATES,
Attorneys for Plaintiff, C. B. Combe, Executor, etc.
DU VAL WEST,
Attorneys for Defendant Thomas Carson, Administrator.
DENMAN, FRANKLIN & McGOWN,
Attorneys for Defendant James Stillman.

In the United States Circuit Court in and for the Southern District of Texas, at Brownsville.

C. B. COMBE, Executor, etc., vs. JAMES STILLMAN ET AL. } No. 21. In Equity.

We hereby acknowledge receipt of a copy of direct interrogatories propounded to J. A. Garver, James R. Cox, and James Stillman, witnesses for the defendants in the above numbered and styled cause, and we hereby waive time and notice and agree that without the issuance of commission any notary public may take the answers of said witnesses to the accompanying direct and cross interrogatories and return said depositions to the clerk of the United States circuit court at Brownsville, Texas, by registered mail, waiving all formalities as to the manner of returning said depositions,
698 provide- a copy of said answers *are* delivered to J. D. Childs by April 21st, 1903, without expense to said J. D. Childs.

J. D. CHILDS,
Attorney for Intervenors Cavazos and Children.

Copy.

Interrogatories to Mr. James R. Cox.

Int. 1. Please state your name, age, occupation and residence?

Int. 2. Please state whether or not you are familiar with the general character of this suit and with the character of the intervention filed herein.

Int. 3. Please state whether or not you were ever employed by Mr. Charles Stillman, or the estate of Charles Stillman, or by Mr. James Stillman, in matters relating to the Fort Brown reservation, so-called, near Brownsville, Texas, or in any matter relating to any efforts to secure an appropriation from the United States Government to pay for the Fort Brown reservation and the occupancy therof by the United States Government, and if yea, state whether such employments were in writing, and if yea, attach the original of such writing to your answer to this interrogatory, and if you have not the originals, state where they are if you know, and attach copy of such originals, if such you have, and state whether within your knowledge such copy is or is not a true and correct copy of such original.

Int. 4. If such employment was verbal, then please state when same was made, with whom same was made, and what was the character of the employment and the terms thereof.

Int. 5. If you have answered that you were employed by either of the parties named in the foregoing interrogatory as attorney to

assist in the clearing up of the title to the Fort Brown reservation, so-called, then please state what you did and all you did to accomplish that purpose.

699 Int. 6. If you state that you were employed by any of the parties named in the foregoing interrogatories in the prosecution of a claim against the United States Government for the appropriation to pay for the Fort Brown reservation, so-called, and for the occupancy thereof by the United States Government, then please state what you did and all you did in the prosecution of such claim?

Int. 7. If you say that you were employed also to aid in the collection of the money appropriated by Congress to satisfy such claim, then please state what you did and all you did towards the collection of such money.

Int. 8. Please state whether or not you were ever compensated for your services in the several matters above inquired about, and if so, who compensated you, what was the amount of the compensation, and when paid.

Int. 9. If you state that you were compensated either by Mr. James Stillman, Mr. Charles Stillman, or the Stillman estate, then please state whether anyone else compensated you in any way for your services, and if so, name the person or persons so compensating you, and stating the extent of the compensation, and when paid.

Int. 10. Please state whether you have any knowledge of any agreement between Mr. Charles Stillman or his estate, or Mr. James Stillman, either with Maria Josefa Cavazos, or anyone representing the interest claimed by her in the Fort Brown reservation, with reference to the payment of expenses in clearing the title to said reservation, or in prosecuting the claim against the United States Government for the appropriation or in collecting said claim for such appropriation had been made? And if yea, state what you know and all you know with reference to such agreement and state particularly whether it was in writing or not. If in writing, state where such writing is, if you know, and if you have either the original or copy thereof, please attach same to your answer to this interrogatory. If you have not the original, but a copy, then please state whether such copy is a true and correct copy of the original or not?

700 Int. 11. Please state whether or not you paid any expenses or made any expenditures either in the clearing of title to said Fort Brown reservation, or in the work of securing the appropriation hereinbefore referred to or in the collection of such appropriation, and if so, state what such expenses and expenditures were, and whether or not same were thereafter paid to you by any one, and if so, when and by whom.

Int. 12. Please state what was the reasonable value of the different services rendered by you in the various matters hereinbefore inquired about.

Int. 13. Please state whether anyone who is now a party to this suit, either originally or as an intervenor, or anyone through whom

said parties claim to have acquired an interest in said Fort Brown reservation, ever in any way interfered with or obstructed your efforts to clear the title to the said Fort Brown reservation, or to secure the appropriation heretofore inquired about, or to collect the amount of such appropriation after same was made, and if so, state who it was, the character of the obstruction or obstructions, and what was the result of such obstruction or obstructions.

Int. 14. To plaintiffs' original bill herein there is attached a certain agreement, dated July 1887, with reference to the disposition of the suit of Salinas, *et al. vs.* Kellogg *et al.* in the United States circuit court of the western district of Texas, and which agreement complainants contend created a trust fund out of the appropriation made by Congress to pay for Fort Brown reservation and the occupancy thereof. Will you please state whether or not you ever saw the original of said agreement, and if so, whether you have same or not, and if you have same, please attach it to the copy of your answer hereto. If you have not the original, please attach to your answer hereto a copy of such agreement and state whether same is a true and correct copy or not.

Int. 15. Please state whether or not you represented any of the parties to said suit of Salinas, *et al. vs.* Kellogg, *et al.*, and if so, whom you represented, and whether or not you were present at the term of the court when judgment was rendered in that case,
701 and what, if anything, you had to do with the execution of the agreement above inquired about.

Int. 16. If you say that you were employed as an attorney in said suit, then please state whether or not said agreement was ever filed in said suit, or made a part of the record of said suit in any way? Please state also whether the United States circuit judge before whom said case of Salinas *vs.* Kellog was tried and adjudicated was apprised of said agreement and whether said agreement was ever introduced in evidence in the trial of said cause.

Int. 17. Please state whether the United States district attorney was ever party to said agreement.

Int. 18. Please state how said case was tried, that is, whether it was tried upon testimony, or tried upon the agreement hereinbefore referred to.

Int. 19. In previous interrogatories you have been asked to produce originals of different instruments. If you have not such instruments in your possession, please state in each instance what search you have made for same, and where you have searched for same, and why you have searched for same, and in what other places, if any, other than those at which you made your search, said originals may probably be found. If you have not made any search for such originals, then please make such search before finally answering the interrogatory, and then state in answer to this interrogatory where you made such search and the result of same.

Int. 20. Do you know of anything additional concerning the matters in question that may tend to the benefit of advantage of the de-

fendants Stillman and Carson, as administrator? If so, declare the same fully and at as much detail as if you had been properly interrogated concerning the same.

DENMAN, FRANKLIN & McGOWN,
Attorneys for Def't Stillman.

Cross Interrogatories.

Propounded to James R. Cox by J. D. Childs, attorney for Rafaela M. de G. Cavazos and children, in the aforesaid cause.

Cross int. 1. Is it not a fact that the sole and only connection you have ever had with the transactions inquired about above, was at the employment of James Stillman, or his father, Charles Stillman, or his mother, Elizabeth Stillman.

Cross int. 2. And was it not in that capacity that you acted as attorney, and were you not paid by said James Stillman, or his father and mother, for all the services or professional work you ever performed in the premises?

J. D. CHILDS,
Attorney for Rafaela M. de G. Cavazos and Children, Intervenors.

In the Circuit Court of the United States for the Southern District of Texas, Brownsville Division,

C. B. COMBE, Independent Executor of Stephen Powers, Deceased, *et al.*
v.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Cross Interrogatories Propounded by the Plaintiffs to James R. Cox, a Witness for Defendant James Stillman in the Above Stated Cause.

1st Int. Where do you now live and where have you lived during the entire period of your professional —?

2 Int. Have you ever read the pleadings and proceedings in the above equity suit No. 21, or any of them, and if so, how did you happen to do it, at whose solicitation when and where and how and from whom did you obtain such pleadings and proceedings.

3 Int. Did you ever receive any letters from James Stillman regarding said suit and if so attach same to your answers hereto? Did you ever write any letter to James Stillman about said suit, and if so, have you copies, and if you have such copies, attach
703 same to your answers.

4 Int. If in answer to any of the direct interrogatories propounded to you by counsel for James Stillman, and especially in

answer to interrogatories five, six and seven, you undertake to state or do state that you did anything under the employment therein mentioned, or mentioned elsewhere in said interrogatories—then state whether or not your acts and services or any part of them are in written or printed documents, and if so, when the same were filed or lodged and in whose custody they are now. And if such writings or documents are on file in any court or in any of the departments of the Government at Washington, or with any committees of the U. S. Congress, or are printed in the Congressional Record, or in the reports of committees of Congress, then please attach the originals or certified copies thereof to your answers to these interrogatories and do not undertake to state the contents of the same.

5 Int. If in answer to direct interrogatory ten or any other direct interrogatory, that you know anything of the agreement therein inquired about and that same is in writing, then state if the original is filed with any officer or department of the Government and if so, attach certified copy to your answer.

6 Int. Were the services performed by you legal services or the services of a lob-yist, either in whole or in part? State fully and in detail? And if in the course of such employment you paid out any funds or money as expenses, then state when and to whom and on what account, and if you took receipts, and if so attach same.

7 Int. Mr. Cox, is it not a fact that, in all the services and acts performed by you under the employment inquired about in the direct interrogatories, that you were acting adversely to all the plaintiffs in equity suit No. 21, and adversely to all the heirs and devisees of Stephen Powers, deceased, and adversely to Maria Grogan Dana? Were you not during your entire connection with the Fort Brown matter denying the rights of said parties and persons therein and seeking to secure the whole of said fund to James Stillman and his father? If then did you not expect obstruction? If the
704 acts of obstruction consisted of any letters or applications or other proceedings in writing or print, then state if the same are not on file in some of the departments of the Government at Washington, then attach authenticated copies thereof to your answers and do not state the contents of same? If, as an instance, you undertake to state that on or about Feb'y 18, 1886, or at any other time, you wrote a letter to the Department of Justice and enclosed a copy to the War Department for the purpose of obstruction you in your efforts to induce the Attorney General to change his opinion theretofore rendered advising against the payment of the Fort Brown fund to you and your clients, as by your letter of date on or about Feb'y 10, 1886, then please obtain from the War Department, or the Department of Justice, an authenticated — of the letter of said Wells and attach same to your answers and do not state contents of same? And do the like as to your own letter.

8 Int. If in answer to direct interrogatories you undertake to state that you were obstructed in your — to clear the title to Fort Brown reservation and secure the appropriation, then state fully and specifi-

cally for whose benefit you were trying to secure the appropriation and what acts of obstruction were thrown in your way and by whom, and if such acts of obstruction were in writing or print, and if so, attach authenticated copies and do not state contents of same.

9 Int. Is it not a fact, Mr. Cox, that the Att'y General, on or about July 16, 1886, rendered a long opinion adversely to your clients in the Fort Brown matter, and on February 10, 1886, you wrote a letter or brief to the Attorney General asking him to review and reverse his opinion and to advise the payment of the Fort Brown fund to your client Stillman? And was not your scheme defeated by the letter of James B. Wells, of Feb'y 18, 1886, and did not the Attorney General stand by his opinion? and is this what you call obstruction? Did you expect the heirs of Stephen Powers, deceased, and Marie Grogan Dana to tamely abandon their claims to the fund out of deference to you — Mr. Stillman and did you consider or do
705 you now consider that they were guilty of any crime or moral or legal wrong in pressing their claims to the fund?

10 Int. Do you regard it as an impropriety or a breach of good manners for any person or persons to oppose the demands of yourself and Mr. Stillman? Have you and Mr. Stillman such a proprietary interest in the favors and functions of government that any application of other citizens in opposition to your wishes is to be characterized as an "obstruction," or do you and Mr. Stillman admit that the heirs of Stephen Powers, deceased, and Maria Grogan Dana have equal privileges and immunities as citizens of the United States with you and Mr. Stillman? And is not one of those privileges and immunities the right to go to the seat of Government and petition the Government for redress?

11 Int. In direct interrogatories Nos. 14–17 inclusive, you are asked about a certain paper. That paper is dated July 13, 1887 and is made Exhibit B to plaintiffs' original bill, and is signed "James R. Cox, attorney and counsel for James Stillman." Among others are you the "James R. Cox" whose name is signed to that paper. And if yea, did you sign it? And if you say that you signed it, then state whether or not when you signed it you intended that you yourself and your client James Stillman should abide by it and perform according to its terms, tenor and effect, or did you intend that said paper should be used by James Stillman as an artifice and a fraud and for the purpose of defraud- the heirs of Stephen Powers, deceased, and Marie Grogan Dana of any interest that — might have in the Fort Brown fund? And have you in your answers to the direct interrogatory undertaken to explain away the meaning, force and effect of said paper.

12 Int. Do you pretend Mr. Cox that it was not understood by all the persons who signed that paper, that the judgment rendered on July 14, 1887 in Salinas *et al. vs.* Kellogg, *et al.*, vesting the title to Fort Brown reservation in Stillman and Carson was for the benefit of all the persons who signed said agreement and that their claims to the reservation *was* to be transferred to the fund and settled

after it had been collected from the Government? And if
706 yea, were you not guilty of a fraud by signing said paper and accepting the benefit of it? By what casuistry do you exonerate yourself and your client James Stillman from the obligation of that agreement?

13 Int. Is it not a fact that Rud Kleburg, who was U. S. district attorney at Brownsville, Texas, and representing the Government in their courts there was fully cognizant of the execution of said agreement, Exhibit D, and that as soon as it was executed and before the judgment was rendered in the case of Salinas *et al. vs.* Keilogg, *et al.*, sent a telegram to Mr. Endicott, Secretary of War, to the effect that in the case of The Heirs of Miguel Salinas against The United States, all the parties claiming title to the Fort Brown military reservation, or any part thereof, are ready to enter agreed judgment vesting title to said reservation in the Government upon payment to them of the amount appropriated under the act of March 3rd, 1885, for the acquisition of the premises? And do you not know that on July 19, 1887, Mr. Endicott, Secretary of War, in a letter of that date, so informed the Attorney-General?

14 Int. Don't you know it to be a fact that the said judgment of July 14, 1887, was as to at least some of the opposing parties thereto, to all intents and purposes an agreed judgment?

15 Int. Please state all the person- with whom you conferred about the execution of said agreement of July 13, 1887? Was not Rud Kleburg, U. S. district attorney, one of them? Please state in circumstantial detail, the entire history of said agreement from its inception down to the present, so far as known to you, and all the persons connected with it, and who were conferred with about it and to whose knowledge it was brought before the judgment whether they signed it or not and when and where and by whom and in what manner all such things and acts were had and done and performed? Who first suggested the making of such agreement and when and where and what part did you take in it? Have you disclosed fully all the knowledge you have on this subject?

16 Int. If in answer to direct interrogatories you have
707 stated that you were employed by any person to prosecute a claim against the United States Government for the appropriation to pay for Fort Brown reservation, then state who employed you? Have you not at all times opposed the claims of the heirs of Stephen Powers, and Marie Grogan Dana? and did you expect them to contribute anything to your compensation or expenses or disbursements? Do you expect to be paid for professional services by people whose claims rights and interests you steadily and persistently oppose?

17 Int. Mr. Cox, are you a lawyer. If yea, don't you know that when Stillman and Carson collected the $160,000.00 from the Government to pay for Fort Brown reservation, that they held that fund in trust to be disposed of and disbursed under the terms of the said agreement of July 13, 1887, Exhibit D to plaintiff's original bill

herein? And if you deny that such is the case, then state the meaning, intent and purpose of said agreement and what your intent and purpose was in entering into it? Why did you stipulate therein that said fund should be deposited in a bank in Galveston and that certain matters in said agreement mentioned should be submitted to arbitrators? When you signed said agreement was it your purpose and did you intend that said fund when collected should be deposited in a bank in Galveston? or did you sign the agreement merely for the purpose and with the intent that Stillman should get possession of the fund and appropriate to his own use and violate every provision of said agreement?

18 Int. Did you not sign the answer and plea in reconvention of James Stillman as his counsel in the suit of Heirs of Miguel Salinas *et al. vs.* Kellogg *et al.*, No. 248 on the law docket of the U. S. circuit court at Brownsville, Texas? and if yea, did you at the time understand and do you now understand that the allegations in said answer and plea in reconvention as to the "ejidos" and "labor" titles are true?

19 Int. Did you make an argument before the jury in that case? What other lawyers made arguments before the jury in that case at the trial? Did you and your associates representing James Stillman in that trial introduce a complete chain of title from the
708 sov-reignty of soil to him, and if you did, then state if you filed your title papers or a list of them in the case? Did the court give a written or an oral charge to the jury on the trial of that cause? How many witnesses were examined orally before the court and how many depositions were read on the trial of that cause? What other proceedings do you remember to have taken place on the trial of that cause? Which of the other parties to that suit besides Stillman introduced evidence before the jury on the trial of that cause? and what evidence was introduced by each and all of them.

20 Int. In that case all of the pleadings of all of the various parties thereto except the plaintiffs were filed within three (3) days of the final trial—how did it happen that everybody got ready for trial so quick and all the proceedings were filed so close together in point of time? Explain this fully and tell how it all happened, if there was no agreement as to the judgment that should be entered?

21 Int. What part of your testimony given in this deposition is given upon your own knowledge and what part on hearsay. State fully and particularly?

22 Int. Did you not by correspondence and other means suggest, negotiate and get up said agreement of July 13, 1887 before you reached Brownsville in July, 1887? If yea, state all that you did and if you have any correspondence or copies of correspondence relative to same, attach it to your answer? Did you not suggest and solicit the making of said agreement in the interest of Mr. Stillman? When and where and by whom and in what manner did you first hear or were you first informed that the making of

such an agreement was mooted or being considered, or had been suggest-? And do you not remember the history of the making of this agreement fully as well as you remember what occurred on the trial of said cause, and if not, why not? Is it to the interest of Mr. Stillman that you should remember the one more vividly than the other?

23 Int. Have you answered fully all these cross-interrogatories fully and faithfully and to the very best of your knowledge
709 and recollection?

24 Int. Mr. Cox, upon the trial of the case of Heirs of Miguel Salinas, *et al. vs.* Kellogg, *et al.* No. 248 in the Federal court at Brownsville in 1887, was there any boundary issue or question presented and especially between the executors and devisees and heirs of Stephen Powers, deceased, and Marie Grogan Dana on the one side and James Stillman and Thomas Carson, administrator- on the other side? If yea, what evidence was offered and admitted by the court on that issue? Give the names of all the witnesses who testified on that issue and especially the name of the surveyor, if any, and attach to your answer a schedule of all the maps and surveys presented as testimony on that issue and all other documents, and state how and by whom such maps, surveys and other documents were proved up and authenticated, and if you say that any such boundary issue was tried and settled in said suit, then state why and explain fully why you signed the said agreement, Exhibit D, of date July 13, 1887, which expressly reserves for future determine the said boundary issues? If you intended to have said boundary issue concluded by the said judgment in that case, then were you not guilty of a fraud and an imposition by signing with others the agreement which expressly reserves the boundary issue for future determination?

25 Int. Don't you know it to be a fact that the claim of defendant James Stillman in this case that the judgment of July 14, 1887 in Heirs of Miguel Salinas, *et al. vs.* Kellogg, *et al.*, No. 248, in fact adjudicated and settled finally all the rights of the parties thereto in and to the Fort Brown fund and that nothing was reserved for future settlement by said agreement of July 13, 1887, Exhibit D is wholly untrue and false, and that said claim of Stillman cannot be maintained in fact except by perjury and subornation of perjury? And if you say Mr. Stillman's claim is true, then explain fully why you signed and executed said agreement and please explain fully the meaning and purpose of that agreement?

26 Int. Don't you know it to be a fact, Mr. Cox, that the judgment of July 14, 1887 in said suit at law would not have been entered had not said agreement been signed? Don't you —
710 that as to the executors and devisees of Stephen Powers, deceased and Grogan Dana that you never would have obtained that judgment but for said agreement? Is it not a fact that you were enabled to obtain that judgment only by signing the agreement on behalf of Mr. Stillman? And is not any attempt on the

part of yourself or Mr. Stillman to deny that it was an agreed judgment a fraud upon the other parties to the agreement and especially upon the plaintiffs in this case.

Int. 27. Don't you know, Mr. Cox, that the United States circuit court of appeals, at New Orleans, has twice held that said agreement created a trust in Stillman and Carson? And that Stillman having had his untruthful denial of the existence of a trust turned down, is it not clear to you that he, Stillman, is seeking your aid to establish by dubious and questionable testimony a contention that is wholly inconsistent with the truth?

Int. 28. Did you have any conversation with Rud Kleberg, U. S. district attorney at Brownsville, Texas, in July, 1887, in regard to said agreement, Exhibit D, or did any one else in your hearing or presence have any conversation with him regarding said matter? And if yea, when and where and what was said and who said it? State fully the history of said agreement, and specially insofar as it was to your knowledge brought to the attention of said district attorney.

C. L. BATES,
Counsel for Plaintiffs, C. B. Combe, Ex'r, et al.

THE STATE OF NEW YORK,
City and County of New York.

By virtue of the foregoing agreement, made and entered into by and between the parties to the above entitled and numbered cause, and the interrogatories accompanying the same, which are hereto attached, I caused to come before me, at my office in the city and county of New York, State of New York, on this 24th day of April, 1903, in lawful hours, the witness therein named, a resident of the city of Auburn and State of New York, who being by me duly sworn to speak the truth, the whole truth and nothing but
711 the truth, in answer to the several interrogatories and cross interrogatories in said cause propounded to him, proceeded to answer the same as follows:

Answers of the Witness James R. Cox.

To the first direct interrogatory the witness answers: I am eighty-two (82) years old, counselor at law, residing at Auburn, N. Y.

To the second direct interrogatory, the witness answers: I am quite familiar with the history and situation of Fort Brown U. S. military reservation, ever since April 1873.

To the third direct interrogatory, the witness answers: In March and April, 1873, I was requested and retained by the late Charles Stillman, deceased, to go with his son James to Brownsville to look after his business and interests there. No writing, verbal conference

only, attended my employment. While there, Mr. William G. Hale informed me that Mrs. Cavazos, of Matamoros, desired to see me, and a day was appointed for me to call. Mr. Hale went with me and introduced me to Mrs. Cavazos. She desired me to look after her property in Fort Brown. She did not tell me that Charles Stillman had any interest in Fort Brown, and I did not know it until some time in 1875.

The action of the city of Brownsville against Cavazos, U. S. Reports 100) embraced Fort Brown and the site of the city of Brownsville, and also the title to other lands adjoining, all which lands had been from 1826 to 1846 occupied by squatters holding rescripts from Matamoros, as labor holders; these holdings were annual leases from the authorities of Matamoros under the old Spanish law and were issued in perfect disregard of the Constitution, federal and State, of Mexico. The whole of the above described lands were the property of Mrs. Cavazos, and no part of them had ever been lawfully acquired by Mexico.

To the fourth direct interrogatory the witness answers: Such employment was during a conversation between Mrs. Cavazos and myself at her residence in Matamoros. No writing, merely verbal, in the presence of Mr. Hale. A day or two after, I saw her again, and she requested me to take charge of her interest in the said
712 suit so commenced, and remarked upon the desultory habits of Mr. Hale, who had been her attorney in former business, but whose habits of intoxication had destroyed her confidence in him.

I was fully aware of Mr. Hale's condition and promised to take charge of her interests and did so. Drew her answers and amended answers and served them in that action as her attorney, and tried the cause after removing the venue to Galveston into the Federal court, also argued the writ of error in the Supreme Court at Washington. Other than the foregoing there was no particular "terms of employment" spoken of.

To the fifth direct interrogatory the witness answers: First. I drew the affidavits and Mr. Hale, the bond—and I moved the district court, Judge William Russell, to change the case into Federal court, which at first refused, after another amended affidavit, was done. At the next term of Federal court, Judge Morrill, I moved to change place of trial to Galveston, which motion was granted.

I visited Brownsville two or three times every year, '73, '74, '75, staying from three to six weeks each time, to acquire accurate knowledge of the important facts. The constitution and laws of Tamaulipas and Mexico under the viceroy of Spain from 1781 when the Espiritu Santo grant was made to Don de la Garza, down to the independence of Mexico, in 1822, the laws of Tamulipas after that down to 1846, the treaty of Guadalupe-Hidalgo, 1848, the constitution and laws and legislation of Texas, down to the annexation in 1845, and down to 1851 and 1852; particularly the acts chartering the city of Brownsville—the repeal thereof—the legislative ap-

proval of the original grant of 1781 and the act purporting to convey to Brownsville "all the ejidos lands" of Matamoros, "but not to impair private rights."

It would be impossible for me to give in detail, the course of study I undertook, or the labor of inquiry to make myself master of both facts and law as to possession of various squatter and labor holders, etc., relating to the business from April 1873, to the termination of litigation in 1879. After the death of Mrs. Cavazos,
713 I was requested by Don Pedro G. Cavazos, who was the executor of her will, to proceed and take charge of the interests of her estate, which I did and argued the case at Washington.

Shortly after the final decision, Don Pedro Cavazos came to New York and conferred with me about soliciting pay from the General Government. I had already entered up the final judgment of condemnation of Fort Brown, commenced in 1853, and served a copy of the judgment upon the Secretary of War (McCrary I think) at Washington. Subsequently, at request of Don Pedro I drew and had printed "A memorial," (copy annexed) of the history and prayer for payment, executed by Don Pedro. Served copies upon the various officers at Washington, the President, Secretaries of War and of State, and also to several Senators and Members of Congress. Don Pedro was with me at Washington a good part of the time of my efforts, but he was ignorant and incapable of rendering much assistance. I drew other papers relating to the Cavazos title and had them printed and distributed among public officers, Senators and Representatives at Washington.

In 1875, Mrs. Cavazos informed me that, Charles Stillman was entitled to one-half interest in the Fort Brown property and had agreed to attend to the litigations and to secure the payment from the Government for Fort Brown and to advance the necessary expenses for that purpose, which were to be deducted from the amount recovered. I, at that time, prepared a deed of this one-half interest, which was recorded in the clerk's office at Brownsville.

I have kept a separate account of my charges and expenses and services between Mrs. Cavazos and myself from April, 1873, and also between Don Pedro Cavazos, executor and myself all through the whole matter.

To state my visits, labors, and expenses at Washington, in laboring to call the attention of public officers to the claim of my clients, is very difficult. It is too "*renovare dolorem*" in respect to the most tedious, difficult, persistent, patient efforts, presented to Presidents Hayes and Cleveland, Secretaries of War McCrary, Ramsey, Lincoln, Endicott, Proctor, and Lamont, who politely promised to assist my rightful claim.

714 There was a searcher of titles one "Bentley," in the library of the building occupied by Attorney General Garland, who undertook to examine the title of Fort Brown who, after much solicitation and delay, made a report and had it signed by Garland (who personally knew nothing about it) and printed for distribution,

containing the statement that in the year 1853, some unauthorized persons undertook to take some process to condemn Fort Brown to public use, under the State of Texas, but were never consummated, etc.

Upon receiving this opinion "of Attorney General," I wrote to Mr. Jefferson Davis, at Beauvoir, Miss., asking him, as he was Secretary of War in 1853, about the condemnation of Fort Brown, and received a courteous answer that he remembered it very well, that it was by direction of the President, and that he and Adjutant General Cooper had directed General Persifor Smith then in command at Fort Brown, to proceed and condemn the premises, also that all the papers and correspondence on that subject were on file in the War Department, etc.

I immediately went to Washington, showed the letter to President Cleveland, and he gave me a note to Secretary Endicott, who gave me a written order authorizing search into the papers of the War Department for 1853. There I found all the papers directing the condemnation, all perfectly regular.

Having found these papers, I took them to Mr. Cleve A Garland, asking him to correct the error made by Mr. Bentley and signed by Attorney-General. He was disinclined to speak of the matter.

Then I went to the President and showed him what I had found, and also to Mr. Bentley, who told me that he knew all about those papers; and I asked him why he did not correctly state the facts. Immediately after the final decision at Washington (Brownsville *vs.* Cavazos, 100 U. S.) I went to Washington to see what next? Saw Mr. Zamacona, the Mexican minister, and solicited his assistance. The conversations at Washington with all the public officers, were always in the name of Mrs. Cavazos, who by the judgment in condemnation was solely recognized as owner. I was soon aware of an "influence" against me, which was not announced in terms,
715 but which I saw was quite efficient in maintaining the "*vis inertia*." So, at the direction of Mr. Stillman, I would call again the next morning cheerful and unabashed. The "influence" to which I refer emanated plainly from General Sherman.

In 1880, from January 7th to January 12th, five days inclusive, I was at Washington conferring with Zamacona, Secretary Evarts, Secretary of War Ramsey, who promised to mentioned Fort Brown in his next report, but didn't. Saw and conversed with various congressmen, and left printed documents with them, who took little or no interest. In all my negotiations with this class of men, I gave no offer of sharing or any hint of recompensing them for their efforts to get the bil- for payment through. Neither Mr. Carson nor Mr. Stillman ever authorized me to hold out such a stimulant.

In 1875, from February 10th to March 28th, I was at New Orleans conferring with Mr. Hale; from there to Galveston preparing for trial at Judge Ballinger's office, whose information about the Espiritu Santo grant was valuable to me. Went from Galveston to

Brownsville, argued motions made by Judge Powers, and some of my own, amending the pleadings, etc., preparing papers and writs for trial. Reached home the last of March.

December 25th, 1875 to January 15th, 1876, at New Orleans and Galveston. Mr. Hale died January 8th. About January 1st, 1876, went to Galveston to put case over on account of the death of Charles Stillman, and of Mr. Hale's condition, besides, Judge Bradley of Washington was expected and did hold court in June at Galveston; and I tried the case.

In May, 1876, three days in Washington soliciting effort in offices, June 11th to Galveston, trying principal cause against Judge Powers and his partner, N. Maxon, deceased, Gen'l Ward of counsel. Got copy of judgment and served it on Secretary of War, begged his attention and to mention Fort Brown in his next report. He promised, but did not perform.

From that to 1880 I felt discouraged. Mr. Stillman took up the matter, and Mr. Carson came and lived at Washington, laboring with congressmen. They took little or no active interest.

716 Unknown go-betweens called to see me to say that they were authorized for $15,000 or $20,000 to get the bill through. Asked them to put it in writing as I had no authority to make terms, and I would submit it to my principal and then answer them. That was the end of it.

January 10th, 1875 to 14th, I was at Washington interviewing F. Schleicher, Hiscock, Lapham, Camp, Dwight. August 29th one day in New York conferring with James Stillman. February 24th, to Washington, conferring with Zamacona, Evarts, General Meigs, Quartermaster General Van Vliet, in whose name as quartermaster the condemnation proceedings were carried on.

In 1882, April 14th to New York, Washington and Brownsville, left there May 14th July 24th, conference at New York two or three days with Don Pedro Cavazos, Mr. Barney and others about Fort Brown.

In 1883, March 6th to 9th, at N. Y. and May 22, 23 and 24, August 10th and 11th, September 6 and 25, October 22 and 23, November 13 and 14, in conference with Don Pedro and Traenor and counsel.

In 1884, from February 1st to March 1st, at Brownsville with Don Pedro and Carson trying to adjust their matters. March 25 at Washington for two days, on Fort Brown business. Conferred with President, Secretary of War, Payne and others. May 12 at N. Y. conference about Fort Brown matters. August 1 one day at N. Y. consulting. October 30 to November 28, 1884, at Brownsville, conferring with Carson, Don Pedro and counsel about settling.

1885, March 3rd and 7th, two days at New York. Wrote out true history of Fort Brown and sent it to the Attorney General at Washington. March 12, one day in N. Y. on the same business. April 20th, Don Pedro and Treanor and I met at N. Y. at conference. Don Pedro refused to sign deed to U. S.

May 5th at N. Y. and Washington two days. May 13, 14, 15, in

Washington with James Stillman soliciting Secretary of War for payment. Again on May 19th, at Washington, with Don Pedro and Mr. Romero trying to make Don Pedro reasonable, which was very difficult.

May 27th, 1885, to Washington two days with Romero,
717 Don Pedro, Secretary Endicott, Hiram Barney, and General Schleicher. June 19, 20, 21, 1885, in N. Y. Conference with Don Pedro, Carson and Mr. Sterling. Endeavored to come to an agreement to divide the fund.

August 11 to 14.—Conference in N. Y. with Don Pedro, Sterling, Barney, Treanor, Carson and others. August 15th.—At work at home on Fort Brown papers six days.

Nov. 4, 5, 13, 14, 1885.—In N. Y. conferring on this business.

Nov. 24–28 at Washington, saw Mr. Bentley about his report. December 2, 3, 4, and 15, at Washington, in regard to Bentley's incorrect statement. December 22 at Washington with Carson and Treanor.

December 28 and 29, in N. Y. with James Stillman, to see what next to be done.

1886.—January 5, 6, 7, with James Stillman and Sterling in Washington. Jan. 18" presented memorial to President Cleveland and conferred with him. He said it was a just claim and ought to be paid, and he would see Secretary Endicott about it. Jan'y 18–29. back and forth from President Cleveland to Endicott; latter always silent, but would do nothing.

Feb. 1, 2, 3, 4, 5, 1886, with James Stillman in Washington. Saw President Cleveland. Could not get report of sub-committee until Feb. 8th. Feb'y 15th in Washington. Made full explanation to President Cleveland, fortified and supported by Mr. Romero and Mr. Foster. Endicott sick and absent. Feb'y 24, one day in N. Y.

March 1 and 2, 1886, in Washington. Saw President Cleveland, Mr. Bentley, Attorney-General Garland and Senator Edmunds of Vermont. March 15, 1886, in Washington. Saw Attorney-General Garland, who was busy and asked me to call again, which I did, and had full conference and explanation with him. Left document.

March 17, 1882.—Called upon Attorney-General Garland to explain my documents.

March 25th, in Washington. Conferred with Attorney-
718 General Garland, Called on Señor Romero and wrote to Secretary Endicott.

May 11, 1886.—Went with James Stillman to Washington. Conferred with President Cleveland and Mr. Bentley.

May 19, 20, 21.—In Washington. Called upon President Cleveland and Secretary Endicott.

May 25".—Read Attorney-General Garland's second opinion. May 13 and 14, 27 and 28, 1886, in N. Y. conferring.

June 19 and 20, in N. Y.

June 27" to July 24".—Prepared written statement and went to Brownsville. Frequent conferences at Mr. Carson's office, in the

evening. Made preparation to try case before Judge Turner, Major Mott also there as additional counsel. On the day before the trial, an arbitration was prepared, and either Major Mott or myself prepared a form of agreement. It was signed by various parties. Mr. Woodhouse came into court next morning and signed it. Cause was called for trial. Nothing had been said to Judge Turner by me, or anybody about our agreement. Evidence offered and received was principally documentary. Mr. Kleberg sat by but took no part. I had no conversation with him that I can remember about the agreement. I don't recall that any evidence was offered by the other claimants. Woodhouse offered none, and I think Judge Turner directed the verdict.

July 30.—One day in N. Y.

1888, Jan. 23 and 24.—In Washington. Consulted Evarts, Nutting, Crain, Townsend, Laird and others.

Jan. 30, 31 and Feb. 1, 1888.—In Washington. Met sub-committee of military committee of the House. Saw John Laird and Townsend, who received evidence of commercial value of Fort Brown, to which I remonstrated as unprepared. No issue properly raised on that subject.

Feb. 8, 9, 10, 1888.—In Washington. Examined witnesses, Gen. Viele and Carson. Labored to get a full committee of 14 members of the House.

719 March 20–26, 1888.—Six days in Washington. Met full committee of the House. Examined Gen. Meigs, Sheridan, Van Vliet, Sypher, Lancaster and others.

November 21 and 22, 1888.—In Washington.

1889, Feb. 26, 27.—In Washington with James Stillman and Carson. President Cleveland gave me a note to Secretary Endicott. Endicott and he gave me an order to examine archives.

March 5, 6, 7, 8, 1888.—In Washington. Evarts gave me a letter of introduction to new Secretary of War Proctor. Many waiting to see him. "Call tomorrow."

March 26, 27, 1888.—In Washington to see Proctor. Knew nothing about it.

1890.—Jan. 2, 3, 4, in N. Y. consulting; also Feb. 25th.

March 21–25, 1890.—In Washington. Deeds for Fort Brown duly executed had been delivered to Secretary Endicott years before. During the years 1891 and 1892, I had little to do with the matter except going to New York at the request of James Stillman. I was disgusted.

About once a year, I made out my bill for services and expenses and sent it to James Stillman. I shall have to refer to him for the details. Whenever I needed money, I usually called upon Mr. Stillman for it. I have not attempted to testify to the many details of study, labor, argument and personal solicitation which occupied a great deal of time when at home, in Auburn. It was the most disagreeable business I ever undertook to do—trying to get pay from the U. S. Government for an honest demand and no power.

From 1891–1895, April, James Stillman had the whole management, took it off my hands.

In 1880, I received from Don Pedro $1,800 for services. Aside from this nobody else ever paid me anything for my services or disbursements in that Texas business, except James Stillman. Besides my services above stated and imperfectly sketched, the mat-
720 ter of Fort Brown and the interest of the Cavazos estate and of James Stillman was constantly in my mind for many years requiring and engrossing much study and reflection; duties appertaining to my position as counsel, and receiving thorough legal investigation.

The foregoing must be my answer to interrogatories 5, 6, 7, 8, 9.

To the tenth direct interrogatory, the witness answers: I have testified as to the agreement, in answer to the preceding interrogatory.

To the 11th direct interrogatory, the witness answers: Of course there were various expenses and outlays resulting from the "vis inertia" of Government officials and *and* their obstinate opposition to the demands; consisting mainly of traveling expenses and hotel bills, which altogether amounted to a very considerable sum.

To the 12th direct interrogatory, the witness answers: It is very difficult to state an exact answer to this question. But to the best of my judgment the value of the services in all these matters of Fort Brown; exclusive of disbursements, was at least $30,000 to $35,000. They required of me the neglect and abandonment of my business at home. A very serious loss to me.

To the 13th direct interrogatory, the witness answers: The obstructions were the refusal of the claimants, such as this Combe-Powers claim—Woodhouse, the Salinas tribe to arbitrate their claims before hostile proceedings had been commenced in Congress and the subsequent suits brought by Woodhouse and others.

During my efforts at Washington to get a hearing before a full committee of the House and while the indignant newspaper reporters were intimating the propriety of propitiating them by the usual Washington argument, a resolution was offered one day in the House by Mr. Holman (the watch dog of the Treasury) alleging the charge of fraud in the Fort Brown claim and affecting to direct the Secretary of War to decline acting under the appropriation of March, 1885, until further investigation could be made. Of course, this resolution was promptly carried. I called at once upon
721 Mr. Holman, and asked him who made the charge of fraud, and in what the fraud was alleged to consist. He calmly informed me that he did not know anything about it.

To the 14th direct interrogatory the witness answered: I did see the original of said paper, I do not know what became of it. I have not seen it since I left Brownsville in July, 1887. The copy annexed to the bill of complaint in this suit as Exhibit D, I believe to be a correct copy of the original.

To the 15th direct interrogatory, the witness answers: I was present

at the trial before Judge Turner of the U. S. district court at Brownsville, in July, 1887, and took the principal charge of the trial. Major Mott was also present as associate counsel with me. I represented the Stillman and Cavazos interests. I have already testified to the facts concerning the stipulation.

To the 16th direct interrogatory, the witness answers: The said agreement was not filed in the said action or made part of the record in any way, or called to the attention of the court; nor did Judge Turner, before whom the case was tried, know anything about it.

To the 17th direct interrogatory, the witness answered: He was not.

To the 18th direct interrogatory, the witness answered: A jury was empanelled, the facts upon which we relied to establish our title were called to the attention of the court, in connection with the documentary evidence which I had in court, and a verdict was formally directed, the other parties not offering any evidence.

To the 19th direct interrogatory, the witness answers: During the past sixteen years I have moved my office three times: have overhauled my papers, destroyed many of them as superfl-ous, and have looked through bushels of them to find an authentic copy of that stipulation. Have never found one. I have not been to Brownsville or to Galveston since 1887.

To the twentieth direct interrogatory, the witness answers: Nothing occurs to me proper to state, except perhaps the fact that
722 being well acquainted with Judge Powers and his partner, Maxan, from the spring of 1873, to their death, and while frequently in their office before the trial in 1876, at Galveston, I never heard either of them to speak of any claim or interest in Fort Brown, except they claimed and sought in that action to maintain the title of the city under the Texas acts of 1852.

Answers of James R. Cox to Cross Interrogatories Propounded by J. D. Childs on Behalf of the Cavazos Intervenors.

To the 1st cross interrogatory, the witness answers: No; it is not a fact; the history of my retainer by Mrs. M. J. Cavazos and by Don Pedro Cavazos, while executor, are heretofore given in my answers to direct interrogatories in behalf of Stillman and Carson.

To the 2nd cross interrogatory, the witness answers: No. I acted throughout, from April, 1873, down to the present time, as attorney for Mrs. Cavazos—afterwards for Don Pedro as executor (whose letters I have somewhere) and after he was superseded and Mr. Carson was appointed, I have faithfully acted in his behalf; there being no question, so far as I know, or matter of difference between Mr. Stillman and Mr. Carson, although I am told that no settlement was possible until this action was disposed of. Evidence of my retainer by Mrs. Cavazos and by Don Pedro is in the printed "memorial" hereto annexed.

Answers of James R. Cox to Cross Interrogatories Propounded by Complainants.

To the 1st cross interrogatory the witness answers: I have lived in Auburn, N. Y. for over the past sixty years, and in the practice of law for 57 years.

To the 2nd cross interrogatory, the witness answers: Hearing in some way of the commencement of this action, I wrote to Mr. Carson, asking what it was, and asked him to send me a copy of the petition. He did so, and I read it.

To the 3rd cross interrogatory, the witness answers: I do
723 not think I have ever received a letter from James Stillman referring to this action; nor that I ever wrote to him about it.

To the 4th cross-interrogatory, the witness answers: The briefs and letters which I wrote are not in my possession. I kept no copies of any of my letters to anybody in Washington, and do not know what became of them.

To the 5th cross-interrogatory, the witness answers: In the answers to the direct interrogatories, I have given all I know in regard to the instrument in question. I can add nothing to what I have stated there, except, perhaps that in arranging that plan, Judge W. P. Ballinger, of Galveston, was our main dependence, as he knew more about the Espiritu Santo grant than any man in Texas. In that July 1887, we looked forward to a prompt and easy settlement of the whole affair. The Secretary of War was expected to pay promptly, and the three arbitrators were to come to Brownsville in the following October and proceed to examine and dispose of the case. But Ballinger died, the next September, and, shortly after, one of the other two declined to act, leaving only one remaining. Moreover, (as I was informed and believe) Woodhouse and some others repudiated the agreement. I do not know of any such paper or copy of it filed in any office in Washington. Secretary Endicott knew of it, as we conversed about it and I think that Mr. J. B. Wells sent a copy of it to Washington.

To the 6th cross-interrogatory, the witness answers: I never had any experience as a lobbyist and never paid or received a bribe. Never paid or spent any money in the whole time of my relation to Fort Brown except traveling and hotel expenses, and printing documents, but I did habitually interview members of Congress, some Senators, Presidents, Secretaries of War, McCrary, Ramsey, Endicott, Proctor, and Lamont, and urge upon them the injustice of which the U. S. Government under them was guilty; and respectfully urged and entreated their action, until my patience was exhausted. If this was lobbying, then I was a "lobbyist."

To the 7th cross-interrogatory, the witness answers: Yes; I did always resist every pretended claim of outsiders to any part

of Fort Brown. I know the history of the title too well
724 to regard those who would rob Mexican lands from their rightful owners under the treaty of 1848. If I was in Brownsville, unless certain witnesses are dead, or have moved away, I could satisfy any reasonable man that Stephen Powers never owned any particle of Fort Brown. Certainly he never returned any part or interest in it for taxes and never paid a dollar of taxes on it, or mentioned it in his will. He always claimed it to belong to the city of Brownsville, as long as I knew him. In 1853, Powers appeared in condemnation proceedings, claiming the property for Brownsville.

I know nothing of any obstruction papers filed in Washington. Never saw them. Do not remember writing a letter to Department of Justice, Feb. 18, 1886, or at any other time. Have no copy of any such.

To the 8th cross interrogatory, the witness answers: As to obstructions in my efforts in behalf of my clients in respect to Fort Brown, I have fully stated them in my answers to direct interrogatories. My efforts were in behalf of the Stillman family and of the Cavazos family, as I have fully stated hereinbefore.

To the 9th cross interrogatory, the witness answers: About the month of January, 1886, an opinion in print, purporting to be signed by Attorney-General Garland, the contents of which I have forgotten except the cool impudence of his mentioning the "attempted expropriation by unauthorized persons, etc."

I called at once, upon Mr. Garland, but he referred me to Mr. Bentley, a clerk or searcher of titles in the Judiciary Department. Mr. Bentley boldly avowed the authorship of the paper. Of course, I knew more about the condemnation proceedings than he did. I had some plain talk with him. He admitted to me that he knew all about the papers that I produced from the archives of 1853, showing the authority and regularity of the proceeding, when he wrote that paper for Garland to sign. I do not remember writing to the Attorney-General.

I had no scheme to be defeated. I was always on friendly
725 terms with J. B. Wells, and I know nothing of his defeating any scheme of mine.

I call "obstruction" in such circumstances, any action by blackmailers setting up pretended claims that I know are unfounded, expecting to be bought off.

While in Texas, I learned enough to satisfy me that any claim, no matter how impudent, against a Mexican property, will receive respectful consideration. To rob a Mexican there is not regarded as a very serious crime; and no doubt there are reprisals on the other side of the river.

As to Mrs. Dana and the heirs of Powers, I do not undertake to charge them with a crime; the attempt to reach the avails of sale by Stillman and Carson to U. S. Government, they not having conveyed any land of Powers or of Mrs. Dana's, is an attempt, in my judgment, to reach that which is not theirs. I am not afraid of it.

To the 10th cross interrogatory, the witness answers: This seems a useless question, depending upon good faith and lawful proof.

I do not know Mrs. Dana, but accord to her all the respect due to her sex and standing. Yet attorneys will frequently urge in behalf of their clients, claims and demands which they ought to know, and do know, are unreasonable, false and preposterous.

To the 11th cross interrogatory, the witness answers: It is true that I signed as attorney a paper in Mr. Carson's office, on July 13th, 1887. It was signed by me in the utmost good faith, intending to perform and abide by it. I was aware of the right of parties, by the common law, to recede from an agreement to submit to arbitration at any time before final submission, but I had no idea or purpose at the time, except to hasten the arbitration. But the Secretary would not pay, Ballinger died, another arbitrator declined to act. Woodhouse and others withdrew and the agreement could not be carried out as was intended.

To the 12th cross interrogatory, the witness answers: I do not pretend anything about it. Personally I was always willing
726 to arbitrate, if competent arbiters could be secured, and never placed a straw in the way.

To the 13th cross interrogatory, the witness answers: I do not know that Mr. Kleberg ever saw the instrument, neither do I know anything of any letters or telegrams between him and the Secretary of War.

To the 14th cross interrogatory, the witness answers: I have already testified fully as to the circumstances under which this judgment was entered. I am very confident that there would have been precisely the same result if no agreement had been made. Major Mott and I were prepared to try the case, and I don't think any of the other parties were.

To the 15th cross interrogatory, the witness answers: In my direct interrogation, I have given all that I know of the history of that document. The persons attending the negotiations were Mr. Wells, Mr. Carson, Major Mott, Mr. Hicks, Mr. Mason and perhaps McManus, and perhaps others present part of the time. I have no recollection that Mr. Kleberg was present upon any occasion. The paper was signed, I think, on July 13, 1887, at Carson's office by all but Woodhouse, who signed the next morning, I think, at the court house.

I do not recollect who first suggested the making of such agreement.

I have here, and in answer to direct interrogatories in behalf of Stillman and Carson, fairly disclosed all I know about the paper and the actors therein.

To the 16th cross interrogatory, the witness answers: While I have acted in these matters, primarily, as attorney and counsel of Stillman and the Cavazos estate, yet subsequent to the judgment of July 14, 1887 I was certainly acting in the interest of any one who had any interest in the Fort Brown appropriation.

To the 17th cross interrogatory, the witness answers: No, I d
not know it. The paper explains itself. My intent was t
727 facilitate the collection of the money, and the settlement o
such suits as Salinas *vs.* Kellogg, and other foolish suit
which might be commenced, and to promote the award of arbitra
tors without delay. The idea of any dishonorable advantage whic
might be taken by Mr. Stillman never occurred to me.

To the 18th cross interrogatory, the witness answers: I do not re
member anything about the pleadings in that suit, or whether
signed it or not.

I do not know anything about the allegations as to labor title
and the ejidos, whether true or not.

To the nineteenth cross interrogatory, the witness answers: I d
not remember making any argument at the trial before Judge Tur
ner, July 14, 1887, except that upon opening the case before cour
and jury, I stated the character of evidence we should offer to estab
lish our title, and the history of Fort Brown, and the condemnation
judgment; and that in those condemnation proceedings Mr. Powers
appeared claiming the property for the city of Brownsville and Mr
Hale appeared in behalf of Mrs. Cavazos, and no other claimants
and the subsequent judgment supporting her title.

I do not remember what other lawyers participated, though Major
Mott was present, and James B. Wells, representing the Powers and
Dana interests.

I know that I had in possession there (presented by Don Pedro)
the original "testimonio" or patent from the viceroy of Spain in
1781, and an English translation thereof; also the will of Don Sal-
vador de la Garza, and of Don Blas, his son, also of Mrs. Francisca
Cavazos, devising the middle third to Mrs. M. J. Cavazos, my client;
also a copy of the judgment in the case of Brownsville *vs.* Cavazos,
(100 U. S. Reports)—and a copy of the action of the highest tribunal
of the State of Tamaulipas, decreeing that Matamoros had never any
title to the ejidos, and that the labor leases were all void, as directly
in conflict with the constitution of the State.

All these and some other documents I had and referred to in my
statement of the facts, which was not disputed. Personally,
728 I do not remember filing a list of the proofs. Perhaps Major
Mott, who assisted me did it. We do not do anything of the
kind in this State.

I think that the judge directed the verdict in our favor, without
any objection. The facts evidenced by the above list of documents
were generally well known in Brownsville, and also that for many
years the labor leases (having stopped all payment of rent to Mata-
moros) were dealt in, assigned from one to another as valuable; and
in several instances had been abused by the holders who sold their
leases and delivered regular conveyances (as of the fee) to purchas-
ers; also mortgages were given and devised by will by those who
had no other title than these void leases. Old Miguel Salonas made
more trouble with his pretensions than any other that I know of.

He sold the land (greatly extended) twice over, and then conveyed portions of what he had sold to different sons of a very large family.

I do not recollect the remarks of Judge Turner to the jury, beyond a mere direction of the verdict.

I do not remember what witnesses were sworn, or what depositions. I am unable to say what witnesses, if any, were sworn.

The identity of the premises and many other matters were conceded on the other side. Apart from the above, I have no recollection of the evidence, or of the further proceedings. I think Major Mott made up the judgment roll and entered judgment.

I have endeavored to speak from my own knowledge as to matters transacted in my presence.

In respect to the conveyances of other so-called claimants, I speak in part from my own examination of the record.

To the twenty-second cross interrogatory, the witness answers: I never thought of, or mentioned, nor did any person mention to me before that week, the idea of arbitration, or the making of such a stipulation. The idea was first suggested, during that week. I do not remember by whom. I have in answer to direct inter-
729 rogatories hereto annexed, fully stated all that I can remember about the instrument you speak of, and need not repeat it here.

Why I do not remember one thing as well as another, is a question in mnemonics, of which everybody has experience.

To the twenty-third cross interrogatory, the witness answers: Yes, I have.

To the twenty-fourth cross interrogatory, the witness answers: I do not think that any proofs of the Powers-Combe claim were presented at that trial. I do not believe they had any to present. I have not here any maps or surveys which were presented to the court and jury. I had such papers, but left them at Brownsville I do not remember the particulars.

I do not say that any "commanding issue" was there tried; but only that my clients' title was substantially shown or conceded. I consented and signed to get along with a tedious matter, in confident hopes of a termination and adjustment by those arbitrators in the autumn following.

To the twenty-fifth cross interrogatory, the witness answers: I never heard of Mr. Stillman making such a claim, except as between the U. S. Government and the parties claiming to own Fort Brown. Nor have I ever heard either him or Mr. Carson intimate any claim to the contrary. I do not understand that either Mr. Stillman's claim, or Mr. Carson's, as administrator, will need any perjury or subornation of perjury to sustain them. I was reluctant to sign that agreement; but considering the high character of Judge Ballinger, and his knowledge of everything pertaining to Fort Brown and the Espiritu Santo grant, I concluded, after conferring with Major Mott, who was satisfied with the high character of the other two arbitrators, to yield and sign the agreement, which I would

never have done could I have anticipated the death of Judge Ballinger in September, or any change in the persons who were selected as arbitrators.

730 To the twenty-sixth cross interrogatory, the witness answers: No. I believe the same result would have been reached by a full trial on the merits.

To the twenty-seventh cross interrogatory, the witness answers: I do not know what the New Orleans court held in this case. I have not seen Mr. Stillman in several years, and hardly more than one letter a year passes between us. He is not a man who would seek to establish "by devious ways and questionable testimony" any untruthful contention;" nor would he be likely to call upon me to help him in such efforts.

To the twenty-eighth cross interrogatory, the witness answers: I had no conversation with Mr. Kleberg upon the subject, before the proposed arbitration; nor do I know that anybody else had any such.

JAS. R. COX.

Subscribed and sworn before me this 24th day of April, 1903.

[SEAL.] CORNELIUS A. LOUGHLIN,
Notary Public, New York County.

Memorial to the President of the United States, in Respect of the Fort Brown Military Reservation, by Pedro G. Cavazos, a Citizen of the Republic of Mexico.

The facts about Fort Brown, at Brownsville, Texas.

731 Notwithstanding the many rumours and reporters' stories which have been circulated during the last two years, charging the appropriation of March, 1885, $160,000.00 as an exorbitant price, is not a fraud, the following indisputable facts have appeared at the recent investigation by the military committee of the House, as ordered by resolution; Mr. Maish of Pennsylvania, chairman of the committee:

First.

The premises, consisting of three hundred and fifty-eight acres of land, situated on a bend of the Rio Grande, directly opposite and a mile distant from the Mexican city of Matamoros, were seized and fortified by General Taylor, in the month of March, 1846, and have ever since been held and occupied by the War Department as a military reservation.

No lease or agreement to pay rent has ever been made, and no dollar of rent or of taxes has ever been paid by the Government.

Second.

During all this time, although subjected to unreasonable attack and unrelenting and expensive litigation, these premises belonged absolutely and in fee simple to Mrs. Maria Josefa Cavazos, an aged widow lady residing in Matamoros, who died at an advanced age, in November, 1878.

In March, 1846, when General Taylor's army took possession, these premises were covered by various squatters, each hold- a small farm, or "labor," of from 20 to 30 acres, under leases (unauthorized, illegal and void), granted by the town council of the city of Matamoros. The army swept away the brush fences, huts and jacals, and expelled the occupants, many of whom, or their descendants, assignees of lease, and mortgagees, have ever since that time asserted and endeavored to maintain some claim, or interest, in the premises, arising from their old labor leases, and have created much trouble, litigation and expense.

Third.

The condemnation.

In the summer of 1853, the city of Brownsville being in-
732 corporated, and rapidly growing, the city lots being freely taken up and built upon, General Persifor F. Smith being in command of Fort Brown, addressed a letter to the Secretary of War at Washington, stating among other things, the following:

1. The advantages of the situation as a military reservation of the United States.

2. The difficulty, owing to many conflicting claimants, of ascertaining the true ownership of the premises.

3. The statutes of 1849, recently passed by the Texas legislature, providing for the acquisition of a perfect title by the United States of any lands in Texas desired for forts, military reservations, etc., without regard to the question of ownership, or in whom the actual title might be; and the manner or proceeding in the district court, for the condemnation of the land, appraisement by a jury, and, (in case of acceptance at the price or value found by the jury) by paying the money into court; upon which the clerk of the court executes the deed of conveyance to the government, under the order of court.

(1st vol. Pasch. Digt. of Statutes of Texas, secs. 5,446 to 5448.)

4. Recommending the acquisition of the premises, and asking authority to proceed under the statute aforesaid; stating that as the property was within the city limits, the jury would be likely to assess the value at from $25,000 to $50,000.00 and asking special authority to Stewart Van Vliet, quartermaster of the post, to institute and conduct these proceedings in behalf of the United States.

5. That as everything was ready to put up permanent improve-

ments and the rules of the service forbid such improvements until the title was acquired, he would immediately inform the department of the price assessed by the jury, in order that the necessary appropriation by Congress might be asked by the Secretary without delay.

This authority was promptly given by the Secretary of War, by telegraph through General Twiggs, at New Orleans; and on
733 the 27th of October, 1846, by a letter to General Persifor F. Smith, from Adjutant General Cooper, confirming such authority, and stating that in regard to the projected improvements upon the premises, the Secretary was unwilling to act until advised of the price of the premises as found by the jury.

Proceedings in the district court of Cameron county were accordingly commenced. Notice to all claimants was duly published by order of the court, for eight weeks successively, in "The American Flag," a newspaper published at Brownsville, and at the appointed day but two claimants appeared; Mrs. Cavazos, by William G. Hale, her attorney, and the City of Brownsville, claiming adversely to Mrs. Cavazos, by Judge Stephen Powers.

The usual proceedings were had, the jury sworn and empanelled, the survey (ordered by the court) produced and proved; witnesses sworn and examined as to value, the premises viewed, and the verdict of the jury received and approved by the court. The jury appraised the value of the premises at $50,000.00.

Fourth.

The improvements.

A litigation then existing as to the title, no adjudication could conveniently be made, as to whom the money should be paid; and pending the litigation, which lasted from 1852 to 1879, (as hereinafter stated) no further order or final judgment of the court was ever made, until after the death of Mrs. Cavazos, (which occurred in 1878) and the final termination of the litigation by the judgment of the circuit court of the United States at Galveston, in 1876, which established the title and complete ownership in Mrs. Cavazos.

But immediately upon the verdict of 1853, of which the department at Washington was duly informed, substantial improvements, buildings, etc., for the accommodation of the officers and troops were put up, and various and successive appropriations made by Congress from time to time to defray the expense, although no appropriation was made to pay for the land until March, 1885.

From that time, continuously, these premises were occupied
734 by the troops, with the sanction of Congress, evidenced by the said appropriations, and by the directions of the War Department, until the late civil war, when the Union forces evacuated the premises, and the Confederate army under General Bee, took possession and held until about 1863, two years and a half,

when the Confederates retired after burning the buildings. Again the Union forces took possession, and new buildings, as at present, were put up by authority and appropriations of Congress, and ever since that day the possession of the United States has been maintained.

The premises being within the city limits of Brownsville, were all the time to the present, subject to taxation as individual property of Mrs. Cavazos, for city, county and State taxes; and the U. S. Government paying nothing all this time, the taxes were defrayed by Mrs. Cavazos until her means were exhausted, and afterwards, and up to this day, by friends acting in her behalf. At any time, between 1853 and the present, the U. S. Government might have perfected its title to the premises, and avoided this constant drain of taxes by paying into the court, (or to its order into the State treasury) the amount of said verdict and interest accrued.

Fifth.

The litigations.

Charles Stillman, a merchant of Matamoros for many years, who died in New York, December, 1875, had purchased of the labor occupants their possession of the site of the city of Brownsville in 1847, 1848; had also purchased, in several head rights and locations under Texas scrip covering the premises since occupied by the city, adjoining Fort Brown; and had in 1848, 1849, laid out the city of Brownsville. And notwithstanding the formidable claim of Mrs. Cavazos under the original Spanish grant of 1781 (ultimately sustained by the Supreme Court of the U. S.), Mr. Stillman being recognized as a man of large property, his warranty deeds of lots in Brownsville were freely accepted, and the city rapidly grew and built up. And when Mrs. Cavazos commenced her action against him and his associates, asserting her title to the premises, after the trial, and in 1852, Mr. Stillman, apprehending that her title
735 was the best, purchased of Mrs. Cavazos, her title to the site of the city (but not including Fort Brown); and, in defense of his right, prepared to resist the extraordinary act of the legislature of Texas; by which act, passed January 24, 1850, not only the site of the city, but also that of Fort Brown, was granted to the city of Brownsville. In January, 1862, that act was repealed, and in February, 1852, the Spanish grant was confirmed.

(See Pasch. Dig't vol. 1, sec. 4461, p. 737.)

Mr. Stillman and his associates conveyed to Basse and Hord, of Brownsville, all their title, including the Cavazos title to the city proper, and the city of Brownsville having in October, 1850, seized and erected a market house upon a block of land in the center of the city, claiming under the legislative grant of 1850, Basse and Hord commenced an action against the city to try the title. Of

course, the question involved as well, the title of the whole city site and Fort Brown, as the title to the market house block. After much preliminary skirmishing, and change of venue, the case was brought to trial, in Calhoun county, in November 1858, and the Cavazos title (represented by the plaintiffs Basse and Hord) fully sustained by the court.

But the city appealed to the supreme court of the State; the civil war came on, and the case was not argued and submitted until April, 1871. This was Gov. Davis' supreme court, and its extraordinary decision and opinion (by Judge Walker), is found in the 36th volume Texas Reports, p. 500, etc. Basse *vs.* The City of Brownsville.

By this decision, the grant of the legislature of Texas was sustained, as conferring the title of all that land upon the city; the former judgment was reversed, and the case dismissed.

(See also Basse *vs.* Fauntleroy, 11 Texas Reports, 700.)

Within ten days after that decision, the City of Brownsville commenced an action against Mrs. Cavazos, Charles Stillman and his associates, for the recovery of the whole ejidos lands, including the site of the city and of Fort Brown and other lands ad-
736 joining. Issue was joined, the cause removed into the U. S. circuit court, the place of trial changed to Galveston, and in May, 1876, the case was fully tried before J. J. Joseph Bradley, (of Washington Supreme Court), and Amos Morrill, district judge.

The original title of Mrs. Cavazos, and the title of Stillman and others, derived from her, was fully adjudicated and sustained, and the prestenses of the city of Brownsville completely overthrown.

The opinion of Judge Bradley is found in 2nd Wood's Circuit Court Rep's, page 293, (City of Brownsville *vs.* Cavazos and others).

A writ of error was taken to the U. S. Supreme Court, from this decision and judgment, and after argument in October, 1878, was fully affirmed, and an opinion written by Justice Field, of the U. S. Supreme Court. (See 100 U. S. Rep. pp. 138 etc.)

This closed and ended the litigations, until the year 1888.

Sixth.

Efforts of the owners to obtain relief.

It appears that in the year 1867, Mrs. Cavazos, by her attorney, applied to the U. S. War Department for a restoration to her of a small portion of the premises occupied by the Government; or at least to be allowed to use for her own occupancy a portion, not needed by the Government. The application was courteously denied and refused.

Immediately after the judgment of the U. S. circuit court at Galveston (June 1876), a copy of the opinion and judgment was sent to the Secretary of War (Secretary McCrary) urgently requesting that

in his next report to Congress he make mention of this decision, and request an appropriation by Congress to complete the purchase. A copy of the same was also sent to President Hayes, with the like result.

On the 9th of June, 1877, despairing of any relief from the Government, notice to evacuate the premises was sent to Secretary McCrary and a copy of the same to President Hayes.

737 No notice was taken of this request.

October 4, 1877, a long letter in behalf of Mrs. Cavazos on this subject was sent to President Hayes, and a copy of it served upon Secretary McCrary.

No notice was taken of that. In January, 1878, after a personal interview by the attorney of Mrs. Cavazos with Secretary McCrary, he kindly agreed to send, in a special report to Congress on the subject; and on the 22nd of January, he informs the attorney by letter that such report was sent in.

Seventh.

Second attemot at condemnation.

On the 20th of February, 1878, by order of the Secretary of War, Colonel Leggett and Major Clendenin, then at Fort Brown, in the service of the United States, presented to the district court of Cameron county, a petition in behalf of the United States asking for the condemnation of the premises to the use of the Government, for the empanelment of a jury, etc. This application was met in behalf of the owners, by the production of the records of the court in 1853, showing that the rights of the Government had been already exhausted on this subject. The court held and decided that the former proceedings were conclusive against a second attempt, and dismissed the application.

All the documents relating to this attempt are on file in the War Department.

Death of Mrs. Cavazos.

Mrs. Cavazos died at her residence in Matamoros, November 18, 1878, thoroughly discouraged and broken down with age, disease, and distress for want of means. She left a will disposing of her interest in Fort Brown and all claims for use and occupation thereof, in trust to her son, Pedro G. Cavazos, a citizen of Matamoros.

This will was duly proved and admitted to probate at Brownsville January 28, 1879. Being a non-resident, and as the estate of Mrs. Cavazos was considerably indebted, her son, Don Pedro, was unable to furnish the bail bond required by the probate court.

738 After waiting two years, and Mr. Cavazos being unable to furnish the bail required, the Hon. Thomas Carson, mayor of the city of Brownsville, was induced to become administrator

with the will annexed, of the estate of Mrs. Cavazos. He appeared before the Committee on Military Affairs at Washington and was examined as a witness on this investigation, February 10, 1888.

Eighth.

Condemnation judgment.

In February 1879, after the judgment of the United States circuit court, on due notice (as authorized by the court) served upon Colonel Leggett, the final judgment of the district court of Cameron county was rendered and entered up to the effect that upon the payment of the amount of the verdict of November, 1853, and the interest thereon, into the First National Bank of Galveston, to the credit of this judgment, and subject to the order of the court, the title of the premises at Fort Brown should pass to the United States Government.

Subsequent efforts.

In January 1880, the memorial of Don Pedro G. Cavazos, briefly reciting the history of Fort Brown, the efforts theretofore made for relief and redress; their failu-e; the decease of Mrs. Cavazos, and her last will; the order of court thereupon, and a copy of the verdict and final judgment in condemnation, all in pamphlet form, was served on President Hayes, Secretary of War Ramsey, Mr. Devens, Attorney-General, and also upon various Senators and Congressmen, entreating some action on this subject.

These efforts were continued at every succeeding meeting of Congress, until March, 1885, (see Congressional Records of June 2nd, 1884, March 3rd, 1885), when after a full discussion of the subject (more particularly in the Senate) an appropriation of the sum of $160,000.00 was made to defray all expenses of a complete title to the premises, and to obtain a full discharge of all claims for use and occupation to that time.

Without knowing how this amount was reached by the committee and approved by the House, we may conjecture the following:

739

Amount of verdict in 1853	$50,000
Interest to 1885, 32 years, at 8% (lawful interest in Texas)	128,000
	$178,000
Deduct for 2½ years, when the premises were held by Confederate army	$10,000
And for the cemetery lot paid for in 1871	5,000
And interest on same	3,000
	$18,000
Balance	$160,000

Of course, this makes no account of city, county and State taxes, for forty years, paid by Mrs. Cavazos; no allowance for Confederate occupation, none for the previous occupation for over seven years from March, 1846, to November, 1853, and none for the heavy expenses of attorneys and agents for many years soliciting relief.

Ninth.

Subsequent obstructions and complications.

No sooner was the appropriation by Congress, of March, 1885, made public, than a host of claims against these premises and property from various persons residing in the vicinty, were served upon the Secretary of War, demanding recognition and allowance.

The records of the county were examined for forty years, and an abstract of all conveyances, assignments, mortgages, etc., pretending to be liens upon Fort Brown, was furnished to the department, in order to obstruct payment to the rightful owners, and perhaps in the hope of being bought off. Most of these were deduced from the ancient labor leases, which had been transferred from one to another, and which gradually found expression in regular conveyance by warranty deeds, mortgages, etc. purporting to convey portions of the property.

There being no tribunal in Washington which could analyze or decide upon these claims, and the department not being willing to pay and take title under the condemnation judgment, the Secretary of War hesitated and delayed action.

740 Then came in the efforts of lobbymen and speculators. At the next meeting of Congress, resolutions were offered requesting the Secretary not to pay for the property, accompanied with applications privately urged to the owners of the property and their attorney, to the effect that for a reasonable remuneration all these obstructions should be cleared away, etc.

Final litigation.

At length in the winter of 1886–87, one of these speculators having a claim of the above character, commenced an action in the district court of Cameron county, of "trespass to try title," (*i. e.* ejectment) against the officer in command at Fort Brown.

By direction of the Secretary of War, the district attorney of the United States, R. Kleberg, Esq., of Cuero, Texas, was requested to appear in that suit in behalf of the United States, and to do what was necessary to bring all the claimants before the court in that action.

Mr. Kleberg appeared, and after removing the cause into the U. S. circuit court, obtained an order, which was duly served, on all the claimants, making each of them parties to the suit.

All of them appeared and some of them answered.

The cause was tried at the July term, 1887, at Brownsville, U. S. Judge Turner presiding, and a jury; and the verdict and final judgment was duly rendered, fully establishing the Cavazos title, and rejecting every one of the other claimants.

No appeal has been taken, and a copy of the judgment record has been furnished to the Secretary of War.

Final obstruction.

At the close of the last Congress, the resolution offered by Mr. Holman, of Indiana, looking to a new "investigation" of this whole matter, passed the House; and an investigation has been made. The report of the committee will shortly appear and it is to be hoped that the appropriation of March, 1885, together with three years' interest from that date, as a scant measure of tardy justice, long delayed, will be now allowed to close this matter, in accordance
741 with good faith, common justice, and the national honor.

Washington, February 15, 1888.

In behalf of the owners of Fort Brown.

JAS. R. COX,
Of Auburn, N. Y., of Counsel.

Letter from General Stanley, at present in command of Fort Brown, under date*d* of January 14, 1888; he writes to Mr. Crain (member from Texas) as follows:

SIR: In answer to your letter of the 13th inst. I have the honor to state that the post of Fort Brown is built, upon a reservation of 358½ acres of land immediately adjoining the town of Brownsville, Texas, and situated on the Rio Grande river, by river route 65 miles, and by land 22 miles, above the mouth of that river. It is the most southern port of the United —, excepting Key West, Fla. It is connected with Pt. Isabel and ocean navigation, by a narrow gu*a*ge railroad 22 miles in length. Immediately opposite is the Mexican city of Matamoros, which is fortified with earthworks, and where the Mexican government usually keeps two regiments of troops and the headquarters of a brigadier-general. The post was established in 1846 by General Taylor, at the outbreak of the Mexican war, and has been occupied by the United States troops ever since, excepting the interval of the civil war, when it was held as a very important post by the Confederate authorities. The improvements on the reservation consist of about 40 buildings of more or less value. Of these twelve are of brick and substantial; the remainder of frame, in fair condition, but needing repairs. Fort Brown, as a military station is an absolute necessity and occupies a very important point geographically and strategetically on our Mexican frontier. Granting that we have no desire for Mexican territory, and hoping that we may never again have war with Mexico, the necessity for this post still remains.

The nearest military post to Fort Brown is Fort Ringgold,
42 100 miles by land, 300 by river, and on the left bank of the Rio Grande. The frequency of thefts of horses and cattle and
f crimes of violence to persons and robberies of stores and ranches
n the frontier between Ringgold and Fort Brown, has made it nec-
ssary to keep up two special stations with a detachment of troops at
ch, one at Santa Maria, 25 miles from Fort Brown, and one at
linburgh, 58 miles from Fort Brown.

Matamoros, opposite to Fort Brown, has a population of 18,000,
nd is the principal city in the State of Tamaulipas, which has a
opulation of 120,000, This State of Tamaulipas is noted for the
rbulent, warlike and aggressive character of its people. It is safe
say that one-half the revolutions that have disturbed the Re-
ublic of Mexico since their independence in 1822, have had their
igin in this State. The great revolution that placed the present
ecutive of Mexico in power, had its beginning right at Matamoros
nd Brownsville. The central government of Mexico hold- a large
rce of soldiers in Tamaulipas and yet not a year passes without
bellions, robberies by wholesale, and invariably when intimidated
e discomfited party flee to our side of the Rio Grande in a mood
appropriate anything they can lay their hands upon.

For these reasons alone, Fort Brown must continue a military
st; its facilities for transportation and improvements already
ade upon the reservation make it preferable to any point on the
wer Rio Grande filling the necessary conditions.

Yours respectfully, D. S. STANLEY,
Brigadier General, U. S. A., Commanding
Department of Texas.

3 *Statement of the Claim.*

I.

r use and occupation of Fort Brown from March, 1846 to November, 1853, seven years, eight months, at $2,500 per annum.....	$19,100.00
alue as determined by jury in November, 1853, in proceedings for condemnation by U. S. Government..	50,000.00
	$69,100.00
single interest from November, 1853, to March, 1888, 34 years, 4 mos. at eight per cent..	189,795.00
	$258,895.00

II.

Same demand at five per cent. annually, interest at 5 per cent. comp	$19,100	
7 yrs. 8 mos	9,669	
		$28,769.00
Add appraisement, November, 1853		50,000.00
		$78,769.00
Add interest at 5 per cent. compounded until March, 1888, 34 yrs., 4 mos		341,911.50
		$420,681.50
The same estimate	$19,000	
Valuation in 1853	50,000	
		69,000.00
Add simple interest at 5 per cent. 34½ yrs		119,025.00
Due to-day		$188,025.00

III.

Assume the property of the value of but $25,000, in March, 1846, and annual interest at but 5% compound calls for	$210,340.75	
Add taxes paid 40 yrs., and interest at 5%, say	20,000.00	
		$230,340.75
Add expenses and cost of efforts for 20 yrs. past in endeavoring to get payment of the claim		15,000.00
		$245,340.75

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IV.

At simple interest at 6 per cent., this valuation of $50,000 for 40 yrs. amounts to	$170,000.00
$3.40 today represents $1.00 payable forty years ago; and if rent for the premises had been paid annually, and interest reckoned upon such payments at 6 per cent., the amount would be upwards of	$300,000.00

V.

General Holabird, quartermaster general of the army, estimates the rental value, as follows:

For 20 years from 1846 to 1866, at $2,500 per annum	$50,000.00
From 1866 to this date, at $3,600 per annum, 2½ years	77,400.00
Aggregate of rents	$127,400.00
Add value of premises	50,000.00
	$177,400.00

Conclusion.

We respectfully ask the appropriation made March, 1885	$160,000.00
Add 3 years' interest at 5 per cent	24,000.00
	$184,000.00

Memorial of Pedro G. Cavazos, a Citizen of the State of Tamaulipas, in the Republic of Mexico, to His Excellency Rutherford B. Hayes, President of the United States of America.

Humbly craving the kind attention of Your Excellency, your memorialist begs to show:

745 That ever since the death of Mc. Maria Francesca (Garza) Cavazos, late of Matamoros, in the State of Tamaulipas, Mexico, which death occurred in the year 1835, the premises and grounds occupied by the Government of the United States, in the county of Cameron and State of Texas, consisting of 358 acres of land, adjoining the city of Brownsville, on the left bank of the Rio Grande, known as the Fort Brown reservation, has been owned in fee by the mother of your memorialist, Mrs. Maria Josefa Cavazos, who departed this life at Matamoros on the 18th day of November, 1878, leaving her last will and testament duly executed at Brownsville, according to the laws of the State of Texas; which last will, etc., being duly proved and admitted to probate and record, in the county court of Cameron county, Texas, on the 28th day of January, A. D. 1879, devised in fee to your memorialist, who is the son of said testatrix, all the lands above named, known as the Fort Brown reservation, together with all arrears of rent or claims for the use and occupation thereof.

(A copy of said last will, and of the proceedings and probate thereof, is hereto annexed, marked Schedule A.)

And your memorialist further shows, that no compensation whatever, either by way of rent, payment of taxes or otherwise, in respect to the said premises, has ever been made by the Government of the United States, or by any person in its service or employ.

That owing to a misapprehension of the true condition and rightful ownership of the said premises, and by the ill-informed and inconsiderate action of the government of the State of Texas, acting by its legislature in the year 1850, particularly by the act of said legislature incorporating the city of Brownsville, passed January 24, 1850, which assumed some ownership of said premises, and purported to convey to the said city all the right, title and interest of the said State in the same, certain litigations arose, and conflicting claims were made, as well in respect to the site of said city as to the premises in question; which claims and litigations, having in one form

after another occupied the attention of various courts and tri-
746 bunals in the State of Texas, have at last recently culminated in a certain final judgment of the circuit court of the United States for the eastern district of Texas, at a term thereof held in the city of Galveston, on the 5th day of June, A. D. 1876; by which judgment the whole of the said premises, that is to say the Fort Brown reservation, was duly adjudged to belong to and appertain in fee simple to the said Maria Josefa Cavazos aforesaid; and that the said claimant the City of Brownsville, had no right, title or claim thereto, or other interest therein.

(The report of said judgment and decision with the history of the title will be found in the second vol. of Wood's Circuit Court Reports, at pp. 293, etc.)

Which judgment, having been carried by writ of error to the Supreme Court of the United States, at the city of Washington, was, by the recent decision of that court, in all things affirmed, by its decision duly announced on the 8th day of December, 1879, in the case of "The City of Brownsville, pl'ff in error, *vs.* Pedro G. Cavazos (your memorialist) and others, def'ts in error."

The history of the title to said premises, the maps, surveys and measurements thereof, and everything connected therewith, with statements of the rights and claims of the said Maria Josefa Cavazos, have been from time to time filed with the War Department of the United States at Washington, and are well known and understood.

And your memorialist further shows, that in the month of November, 1853, the Government of the United States, duly acting by its officers, attorneys and agents, instituted certain proceedings under the statutes of the State of Texas, and before the court thereof, for the purpose of acquiring the title to the said the Fort Brown reservation; and duly proceeded to the appraisal thereof in the said court, by the usual jury for that purpose duly empanelled and sworn; and thereupon, after hearing the proofs and allegations of the parties, and after viewing the said premises, the said jury duly rendered a verdict, appraising the value of the said premises, being
358 acres of land adjoining the city of Brownsville, with
747 metes and bounds duly surveyed and established, at the sum of $50,000; which verdict was duly approved by the said court.

And thereupon, the said Government of the United States, acting by its military department, entered into full and exclusive possession of all the said premises, and erected various buildings and structures, and occupied the same with troops and munitions, and has so continued to occupy the same from that time up to the present, and still holds and occupies the same; but have never concluded the said proceedings according to the said statutes of the State of Texas by making payment or by depositing for the use of the true owners of the said premises, the said sum of $50,000, or any part thereof.

And your memorialist is informed and believes, that owing to the

conflicting and pretended claims of the said The City of Brownsville, its agents and attorneys; and without the knowledge of who might be finally held to be the rightful owner of said premises; and owing also in part to the casual interruptions of the functions of Government by the late civil war, the said the Government of the United States have hesitated and hitherto declined and neglected to make the required payment of the said sum of money, in completion of the said proceedings for condemnation aforesaid.

And after the said judgment of the said the United States circuit court at Galveston, in June, 1876, as aforesaid, the true right and title of, in and to the said premises having been thereby shown and established in the said Maria Josefa Cavazos, now deceased, the said proceedings for the condemnation of the said premises, in the said the district court of Cameron county, were duly continued and completed on the 20th day of February, 1879; and judgment was duly rendered condémning the said premises and awarding payment by the said the United States of America to your memorialist as sole devisee of the said Maria Josefa Cavazos, of the sum of $50,000 with interest thereon, of all which due notice has been given to the military department of the said Government of the United States.

(A copy of all the said proceedings in condemnation of said
748 lands and the judgment of the court thereon, duly attested and certified by the proper clerk of the court, with the seal thereof; together with the final judgment of the said court and a full description of the said premises so condemned, is hereto annexed, marked Schedule B.)

And your memorialist further shows, that at various periods during the last 25 years, the said Maria Josefa Cavazos, deceased, has from time to time, and many times, called upon various public officers of the United States Government, for compensation for her land thus appropriated and used, has from time to time paid and discharged the State and county taxes assessed upon said land, in all to upwards of $2500; has caused to be deposited and filed in the offices of the War Department of the said The United States, the evidences of her claim of title and of her equitable and legal ownership thereof; and has from time to time solicited of the said Government some proper and just relief; but she was answered only with the information that the Congress of the United States had made no appropriation for payment and that none would probable be made so long as the title was in litigation, thus enabling the city of Brownsville for these many years, by interposing its unfounded and pretended claims to said premises, to defeat, postpone and prevent the payment of the just and reasonable claims of the said Maria Josefa Cavazos, deceased, for compensation for her property condemned by the Government of the United States.

Your memorialist therefore prays, that all obstacles and uncertainties being now removed and there being now no reason for further delaying the payment of said award, Your Excellency will be

pleased to take measures for the prompt discharge of the said obligation, and the rendering of justice long deferred.

And your memorialist as in duty bound, etc.,

Dated at Matamoros, Mexico, this 16th day of December, A. D. 1879.

PEDRO G. CAVAZOS.

JAS. R. COX,
Of Auburn, N. Y., Att'y for P. G. Cavazos.

749 (SCHEDULE A.)

Be it remembered that there was begun and holden a regular term of the county court of Cameron county, in the court house of the city of Brownsville, on the 27th day of January, A. D. 1879, it being the fourth Monday of said month, and the day set for the taking uprof all probate or any other lawful matter which may be brought before the same.

Present: Hon. R. B. Kingsbury, county judge, Adolphus Glaevecke, clerk, William Scanlan, sheriff, by Santiago Brito, deputy.

The court was opened by proclamation, whereupon among others the following proceedings were had, on the 31st day of January 1879, it also being a day of said term:

Estate of MARIA JOSEFA CAVAZOS, Dec'd.

In the Matter of the Last Will and Testament of the said MARIA JOSEFA CAVAZOS, Deceased.

Now on this 31st day of January, A. D. 1879, the petition of Pedro G. Cavazos, for the probate of a certain document in writing now produced in court and filed herein on the 28th day of January, A. D. 1879, purporting and alleged to be the last will and testament of the said Maria Josefa Cavazos, deceased, and for letters testamentary thereon, coming on to be heard, and it appearing to the entire satisfaction of the court that due and legal notice thereof had been given, and being no opposition thereto, and on reading the testimony of Thomas Carson and Jeremiah Galvan, a statement of which is filed with the papers of this cause:

It is by the court now here considered, adjudged and decreed that the said instrument is proved and that the same be recorded as the last will and testament of the said Maria Josefa Cavazos, deceased, and that the testimony aforesaid be also recorded with said will.

And it is now here further ordered, adjudged and decreed
750 that the said Pedro G. Cavazos be and hereby is appointed executor and testamentary trustee of the said last will and testament of the said Maria Josefa Cavazos, deceased, and that upon his giving a bond in the sum of ($100,000.00) one hundred thousand dollars, conditioned as the law directs, and taking the oath as by law provided, that letters testamentary do issue to him.

And it is further ordered, that Simon Celaya, Feliciano San Roman and James A. Browne be and they are hereby appointed appraisers of said estate.

The Last Will and Testament of Mrs. Maria Josefa Cavazos, of Matamoros, Mexico.

In view of my advancing age, and of the complications which may arise in case of my sudden decease or incompetency through sickness or accident in regard to the "Fort Brown property" in Cameron county, State of Texas, for the sale of which to the Government of the United States I am now negotiating, through my attorney and agent James R. Cox, of Auburn, N. Y.; and being at the present in the enjoyment of good health and sound mind, I do hereby ordain, publish and declare the following to be my last will and testament, so far as "the Fort Brown property" is concerned, that is to say:

I give, devise and grant unto my beloved son, Pedro G. Cavazos, of Matamoros, the whole of the Fort Brown property, as at present occupied by the Government of the United States as a military post, consisting of about three hundred and fifty-eight acres of land, more or less, adjoining the city of Brownsville, Cameron county, State of Texas, and bounded by the Rio Grande river at low water mark, as surveyed and mapped by H. M. Field, surveyor, in October, 1873, and authorize my said son to deed and convey the same to said Government, upon any terms approved by my said agent and attorney.

I also give and bequeath to my said son, Pedro G. Cavazos, of Matamoros, Mexico, all of my right, claim and demand for rent, use and occupation of the said premises from the year 1848, up to the date of my decease, and authorize him to collect and receive
751 and receipt for the same, and the price of the sale aforesaid to be made, which shall be in full discharge of all my claims against said Government.

In trust, nevertheless, as to the whole of said receipts, both for the price and the rent or use, for the uses and purposes which I may hereafter propose or provide by a further testament then such avails of the said property are to be by him accounted for and apportioned or divided among my heirs, according to law; but the said Government of the United States so purchasing and paying, are not to be in anywise accountable or responsible for the investment or distribution of the proceeds or avails.

Witness my hand and seal at the city of Brownsville, this 21st day of April, 1877.

MARIA JOSEFA CAVAZOS. [L. S.]

The foregoing instrument, consisting of one sheet of paper, was in our presence, on this 21st day of April, 1877, duly signed and sealed by the said testatrix, to us well known to be Mrs. Maria Josefa

Cavazos, of Matamoros, and was by her in our presence stated to be her last will and testament in respect to the Fort Brown property, and we, at her request and in her presence, and in the presence of each other, hereunto subscribe our names as witnesses.

Witness:

[L. S.] ADOLPHUS GLAEVECKE,
Clk Cty Ct., Cam. Co., Texas.
JEREMIAH GALVAN.
THOMAS CARSON.

THE STATE OF TEXAS, }
County of Cameron. }

In the Matter of the Proving the Last Will and Testament of MARIA JOSEFA CAVAZOS, Late of Matamoros, Mexico, Now Deceased.

Thomas Carson, of the said county of Cameron, State of Texas, being duly sworn in open court, on his oath doth depose and say: That he is of the age of 25 years and upwards, and has resided in the city of Brownsville in the said county and State for several years last past; that in her life time he knew and was well ac-
752 quainted with Dona Maria Josefa Cavazos, late of Matamoros, Mexico, now deceased; that the residence of the said Maria Josefa Cavazos in the said city of Matamoros was only some three miles distant from this said city of Brownsville, and that she had so resided there for many years before her death; that on or about the 21st day of April, A. D. 1877, this affiant signed, as a witness, the last will and testament of the said Maria Josefa Cavazos, at the request and in the presence of her the said Maria Josefa Cavazos, and that the said Maria Josefa Cavazos did then and there in the presence of this affiant, sign the same as her last will and testament, and did then and there declare and publish the said instrument so subscribed by this affiant and herself *was* her last will and testament.

That Jeremiah Galvan, also of the said county and State, did also under like circumstances, subscribe the said instrument as a witness; that the instrument now here produced and shown to me, and filed herein for probate on the 28th day of January, A. D. 1879, is the same as hereinabove mentioned, and is the true and genuine last will and testament of the said Maria Josefa Cavazos, *as* in my and the presence of the said Jer-miah Galvan was subscribed by the said Maria Josefa Cavazos as her last will, and that the signature- thereto of the said Maria Josefa Cavazos, Thomas Carson and Jeremich Galvan, are the true and genuine signatures of the said respective parties, including this affiant's, who signed his name thereto as "Thomas Carson," and that at the time of signing the said instrument the said Maria Josefa Cavazos was in her sound mind and memory; that the said Maria Josefa Cavazos departed this life on or about the 18th day of November, A. D. 1878.

THOMAS CARSON.

Sworn to and subscribed before me in open court, this 30th day of January, A. D. 1879.

ADOLPHUS GLAEVECKE,
Clk C'ty Ct., Cam. Co., Tex.

753 THE STATE OF TEXAS, }
County of Cameron. }

I, the undersigned authority do hereby certify that the within and foregoing seven (7) pages of paper writing contain a true and correct transcript of all the proceedings and orders in the matter of the probating of the last will and testament of Mrs. Maria Josefa Cavazos, deceased, as taken from Book E, pp. 251, 252, 253 and 254, minutes of the probate court of Cameron county, Texas.

In testimony whereof, witness my hand and official seal of office in the city of Brownsville, this 19th day of February, A. D. 1879.

[SEAL.] ADOLPHUS GLAEVECKE,
Clk C'ty Ct., Cam. Co., Tex.

(SCHEDULE B.)

District Court of Cameron County.

In the Matter of the Condemnation of Land of Fort Brown by the United States, on the Application of Stewart Van Vliet, Its Agent,
vs.
MARIA JOSEFA CAVAZOS and Others.

Copy.
Notice of Motion.

Please take notice, that on the records of this court, for the year A. D. 1853, in this matter, and also upon such records in the year 1878, in relation to the said lands; and upon the affidavits of Alexander Werbiskie and of Pedro G. Cavazos, with copies of which you are herewith served, a motion will be made at the next term of this court, to be held at the county court house in the city of Brownsville, on the 17th day of February, 1879, at 10 o'clock a. m. or as soon thereafter as counsel can be heard, for an order substituting
Pedro G. Cavazos, as defendant and claimant in the place of
754 Maria Josefa Cavazos, deceased; and also for an order of
reference to some referee to be appointed by the court, to ascertain and report the amount of interest accrued upon the appraisal of said lands in 1853, and the amount of taxes on said property paid by the said Mrs. Cavazos, deceased, since 1853, and for the adjustment of the proper amount now due to the estate of the said Mrs. Cavazos, or to her executor and devisee, by reason of the said proceedings, occupancy, condemnation and appraisal, and for such other

and further or different order and relief in the premises as shall be agreeable to equity.

Yours, etc., JAS. R. COX,
Attorney, Formerly for Mrs. Cavazos, Deceased, and Now for Pedro G. Cavazos.

Brownsville, February 12, 1879.

To F. H. Leggett, Esq., attorney for the United States.

District Court of Cameron County.

In re THE UNITED STATES
vs.
MARIA JOSEFA CAVAZOS and Others, for the Condemnation and Appraisal of Fort Brown Property.

CAMERON COUNTY, *ss:*

Pedro G. Cavazos, of Matamoros, in the Republic of Mexico, being duly sworn, says that the said Maria J. Cavazos was deponent's mother and is now deceased; that she departed this life on or about the 19th day of November, 1878, leaving her last will and testament, by which deponent is appointed executor, and is devisee sole of all the Fort Brown lands in question. And deponent asks that by the order of this court he may be substituted in the above proceeding in place of his said mother deceased.

PEDRO G. CAVAZOS.

755 Subscribed and sworn before me, this 12th day of Feb'y, 1879.

F. M. CAMPBELL,
[SEAL.] *Cl'k D't Ct., Cam. Co., Texas.*

STATE OF TEXAS:

District Court of Cameron County.

Affidavit of Alex. Werbiskie.

In the Matter of the Condemnation and Appropriation of Lands Appertaining to and Including Fort Brown by the Military Government of the United States.

CAMERON COUNTY, *ss:*

Alexander Werbiskie, of Brownsville, in said county, being duly sworn, says that he is a citizen of the State of Texas, and a resident of the city of Brownsville in said county, and has there resided for

the thirty years last past; that he is familiar with the premises in question, and has been familiar with the same during the past thirty years. And deponent further says, that during the year 1853, and from that time continuously up to the present time, and at the present time, the said The Government of the United States has been in the actual possession and occupancy of the whole of said premises, as a military post of the said Government—with the exception, however, of a short time in or about the year 1861, when, during the late civil war, in consequence of certain military movements of the enemy the fort was evacuated temporarily, and not to exceed 29 months, by the said United States military forces, who shortly after again occupied the same, and so continued until this day to occupy and hold the same. And deponent further says, that the different military officers of the United States Government who have, succeeding each other, held the command and charge of said premises, as well as this deponent, is now able to give the same, are as fol-
756 lows: viz: General Giles Porter; Major Webster; Colonel Hunt; Colonel Taylor; Colonel Hill; General Banks; General Sedgwick; General Brown; General Steele; General Herron; General Witzel; General Dana; General Reynolds; Colonel Clitz; Colonel McCook; Colonel J. H. Porter; Colonel Thomas Devine; Colonel M. B. Sweitzer and Geroge Sykes and General Doubleday.

ALEXANDER WERBISKIE.

Sworn and subscribed before me, this 21st day of Nov., A. D. 1878.

ADOLPHUS GLAEVECKE,
[SEAL.] *Clk Cty Ct., Cam. Co., Texas.*

STATE OF TEXAS,
County of Cameron.

Thomas Carson, of Brownsville, in said county, being duly sworn, says that on the 12th day of February, inst., he duly served upon H. F. Leggett, Esq., who was the last appearing attorney for the United States in the matter of condemnation of the Fort Brown military reservation, described and referred to in the annexed papers, copies of the annexed affidavit of Pedro G. Cavazos, and of Alexander Werbiskie, with the notice of motion hereto annexed, by depositing the same in the post office at Brownsville on that day, duly postpaid, directed as follows: "Captain H. F. Leggett, Fort McIntosh, Lando, Texas," the said Lando being the place of residence of the said Leggett, and that there is regular communication by mail between Brownsville and Lando aforesaid. Said papers were all duly enveloped and sealed, and directed as above, when such deposit in said post office was made.

THOMAS CARSON.

Subscribed and sworn before me this the 20th day of February, 1879.

[SEAL.] F. M. CAMPBELL,
Cl'k D't Ct., Cam. Co., Tex.

757 Circuit Court of the United States, Eastern District of Texas.

THE CITY OF BROWNSVILLE *vs.* MARIA JOSEFA CAVAZOS, CHARLES STILLMAN, William G. Hale, and John Treanor (the said Stillman and Hale Having Deceased and Their Heirs Being Substituted).	On Trespass to Try Title.

On tri-l before Justice Bradly and Judge Morrill, commencing May 30", 1876, and ending June 5", 1876.

Maxan, Powers & Waul, for plaintiffs; James R. Cox, Jack & Ballinger for defendants.

Opinions, Findings, and Judgment of the Court, a Jury Being Waived by Stipulation in Writing Filed.

(Here follows the opinion of the court, concluding as follows:)

Our decision is in favor of the defendants, as follows:

We find against both parties in fact on the issues of prescription.

And as a matter of law, we find for the defendant on the question of title, namely: that the defendants are respectively seised in fee of the respective parts and portions of the land claimed by the petition, for which they respectively defend, and that the plaintiff is not so seised, and as a consequence of this finding, we also find the defendants not guilty, as they have severally pleaded, subject, however, to the disclaimer filed by the defendants, the lands and premises disclaimed not being embraced in this judgment.

And we give judgment for the defendants, that they severally recover the said lands, in the parts and portions respectively claimed by them in the pleadings in the cause, and that as to the action and demand of the plaintiffs, they go thereof without day
758 and (defendants) recover their costs.

(Signed) JOSEPH P. BRADLEY,
Associate Justice Sup. Ct. U. S.

(Signed) AMOS MORRILL,
Dist. Judge.

Judgment.

Wherefore, it is considered by the court that the plaintiff, The City of Brownsville, take nothing by its suit, and go hence, without day, and that the defendants in this suit do have and recover of

and from the said plaintiff, The City of Brownsville, all the lands and premises in the answer and reconvention of the defendants set forth and claimed in this suit, not including herein the lands and premises as to which the said defendants disclaim title in the pleadings in this cause, to-wit: the market house square and improvements thereon, the streets, alleys and lanes of the said city, the Washington square, the public cemeteries, and all other of said lands which have been conveyed by Elisha Basse and Robert H. Hord, and others, the grantors of the said defendants herein to the plaintiffs in this cause; and that the process of this court shall issue to cause said defendants to have possession of said lands and premises so recovered by them, and that the said defendants do have and recover of and from the said plaintiff all their costs in this behalf expended, for which execution shall issue.

— C. Dart, clerk of the circuit court of the United States, for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the judgment rendered and entered on the 6th day of June, A. D. 1876, in cause No. 887, on the law docket of said court, entitled "The City of Brownsville *vs.* Maria Josefa Cavazos, *et al.*," as the same now appears of record on the minutes of said court in my office.

To certify which, witness my hand and the seal of said court, at Galveston in said district, this the 18th day of July, A. D. 1878.

[SEAL OF SAID COURT.]

759

(Signed) C. DART,
Clerk of the U. S. Circuit Court,
By JAMES T. SPANN, *Deputy.*

Be it remembered, that on the 7th day of November, 1853, there was begun and holden a district court in and for the county of Cameron, at the court house thereof in the city of Brownsville:—

Present: Hon. A. W. Arrington, judge. W. W. Nelson, clerk. E. M. Anderson, sheriff.

E. J. Davis, district attorney elect, appeared in court and took the usual oath of office and thereupon entered upon the discharge of his duties.

And on Tuesday, the 22nd day of November, A. D. 1853, among others, the following proceedings were had:

In the Matter of Application of STEWART VAN VLIET, on the Part of the United States, for the Assessment of the Value of the Lands within the Limits of the Garrison of Fort Brown.

This application coming on to be heard, and it being shown to the satisfaction of the judge that a proper notice of said application had been published in the American Flag, a newspaper published

in said county of Cameron, for eight weeks, in conformity with
came the said Stewart Van Vliet, on behalf of the United St
and also came The City of Brownsville, a claimant to said lan
its attorney, and consents that the said assessments be made i
cordance with the prayer of said application; and also cam
Basse and R. H. Hord, in their proper persons, and Maria
sefa Cavazos, by her attorney, also claimants to said l
760 and filed their protest in relation to said application;
the survey of said tract of land heretofore ordered ha
been made, and the same being duly returned, and the field
and a map thereof being duly ordered to be filed; thereupon, a
request of the said Van Vliet, came a jury of good and lawful
who were duly empanelled and sworn, who, after hearing the
dence offered on the part of the United States, and also on the
of The City of Brownsville, claimant herein, and having inspe
and made an examination of the land set out in said applicati
defined in the said survey, have returned the following verdict

In the Matter of the Application of STEWART VAN VLIET, on
Part of the United States, for the Purchase of the Land wi
the Limits of the Garrison of Fort Brown.

We, the jury, assess the value of the lands mentioned in
application $50,000.00

E. D. KATMAN, *Foreman*

Which said verdict and assessment is approved by the judge
is is ordered that the field notes of said survey be entered of rec

THE STATE OF TEXAS, }
County of Cameron. }

I, the undersigned authority, do hereby certify that the wi
and foregoing contain- a true and correct transcript of the origi
as taken from Book A, p. 50, minutes of the district court of C
eron county, Texas.

Witness my hand and seal of the county court, at
[SEAL.] office in the city of Brownsville, this 30th day of Aug
A. D. 1878.

ADOLPHUS GLAEVECKE,
Cl'k C'ty Ct., Cam. Co., Texa

761 *Order and Judgment.*

STATE OF TEXAS:

In the District Court of the County of Cameron.

In the Matter of the Condemnation by the United States, on the Application by the War Department Thereof, by STEWART VAN VLIET, Their Agent, of Certain Lands in said County, Known as a Military Reservation of Fort Brown, Claimed by Pedro G. Cavazos, under the Last Will, etc., of Maria Josefa Cavazos, Dec'd, and also Claimed by the City of Brownsville. No. 1232.

At a regular term of the said court, held at the court house in the city of Brownsville in said county, on the 20th day of February 1879:

Present: Hon. John C. Russell, judge of said court.

Judgment.

It appearing by the records of this court of the year 1853, that the proceedings in this matter were regularly commenced and conducted, and that the verdict of the jury, duly chosen and sworn, in pursuance of the statute in such case provided, was on the 29th day of November, A. D. 1853, duly rendered and received in this matter with the approval of this court, by which the value of the said premises at that day was duly estimated, appraised and determined to be the sum of $50,000.

And whereas it is made to appear, by the production of a certified and authenticated copy of a certain judgment in the circuit court of the United States for the eastern district of Texas, duly rendered in an action in that court involving the title and ownership of the said premises, and in which action The City of Brownsville was plaintiff and Maria Josefa Cavazos (who was the claimant of said premises but now deceased), and others were defendants, and which judgment was rendered and docketed in said circuit court on the 5th

762 day of June, A. D. 1876, that the true title and ownership of said premises was in the said Maria Josefa Cavazos, and that the said, The City of Brownsville had no title or interest whatever in the said premises:

And whereas, by an order of this court, dated the 20th day of February inst. the said Pedro G. Cavazos, as sole devisee under the last will, etc., of the said Maria Josefa Cavazos, succeeding to the right, title and interest of his said mother, the said Maria Josefa Cavazos, deceased, was duly substituted as the proper claimant and owner of said premises, according to the force and effect of the said

judgment, and of the said last will etc., of which judgment and will, etc., duly authenticated copies are duly filed and of record this court, and to which, with the proofs and probate of said will, etc., reference is herein duly intended.

And whereas, this court has been duly informed by the affid of Alexander Werbiskie, of Brownsville, dated 21st day of Nov ber, 1878, and which is duly filed herewith, that the whole of said premises has been occupied, claimed and held by the said tioners, The United States, as a military reservation ever since 29th day of November, A. D. 1853, in pursuance of the said o nal proceedings and verdict of appraisal of that day.

And whereas, on account of the pending of the aforesaid lit tion, no money has ever been paid into this court, or to either of said claimants of said premises, as and for the consideration of ment of said lands, or in pursuance of the said statute of this S providing for the condemnation of such premises; and the wh amount aforesaid of the appraised value, with interest thereon, remains due and unpaid, awaiting the final result of the said lit tion, upon writ of error still pending in the Supreme Court, in action aforesaid, in which (as the record now stands) the said of Brownsville is plaintiff in error, and the said Maria Jo Cavazos (now deceased) with others, are defendants in error, at W ington aforesaid:

Now, at this day, upon producing and filing proofs of ser upon H. F. Leggett, Esq., the attorney last appearing in
763 half of the United States in this matter, of copies of the affidavit of Pedro G. Cavazos and of Alexander Werbi aforesaid, with due notice of this motion:

After hearing Mr. James R. Cox, of counsel in behalf of the Pedro G. Cavazos and James B. Wells, Jr., Esq., in behalf of the of Brownsville, no person appearing in opposition thereto; after deliberation had:

It is ordered, adjudged and decreed that the said premises known as the military reservation of Fort Brown, so petitioned and appraised as aforesaid, be, and the same are, as hereinafter creed, condemned and appropriated, under and in pursuance of statutes aforesaid and of the proceedings heretofore had in this m ter, to and for the use, service, occupation, ownership and juris tion of the United States for such military reservation for ever; t is to say, described as follows:

"Beginning at a point on the left bank of the Rio Grande ri adjoining the city of Brownsville, where a line in the center of Fo teenth (14th) street of said city, moving southwestwardly, strikes said river; thence north 57 and 25/100 degrees east, on a line m ing thirty feet west of the quartermaster's wall, now there standi two thousand (2000) feet to the center of Monroe street in said ci intersecting the city limits of Brownsville; thence south sixty-c degrees east three thousand four hundred and fifty (3450) feet t mesquite post set for a corner; thence south thirty degrees east, n

hundred and fifty (950) feet to low water mark of the Rio Grande river, thence up the said river at low water mark as the same winds and turns, about fifteen thousand (15000) feet to the low water mark at the place of beginning, containing, inclusive of the cemetery grounds, about three hundred and fifty-eight and eight-tenths (358.8) acres of land be the same more or less," the whole thereof being now in the actual possession and occupation of the said The United States, and as the same are thus held and possessed.

And it is further ordered, adjudged and decreed, that upon the payment by the United States of the said sum aforesaid of fifty
764 thousand dollars, together with the interest thereon from said 29th day of November, 1853, at and after the usual lawful rate of eight per centum per annum, into the First National Bank of the City of Galveston, to be disposed of as hereinafter provided, the whole right, title and interest of both the said The City of Brownsville and of the said Maria Josefa Cavazos, deceased, and also of the said Pedro G. Cavazos, her successor in interest, in and to the said lands and premises, shall vest forever in the United States of America, for the uses and purposes as prescribed and provided in and by the statutes aforesaid; the future disposition of the fund thus to be paid into the said bank to be subject to the order of this court, on the application of either party, who shall become thereto entitled, upon the final disposition of the said cause pending on writ of error in the said Supreme Court of the United States, at Washington, wherein The City of Brownsville is the plaintiff in error, and the said Maria J. Cavazos (or if he shall be substituted in place of the said Maria Josefa Cavazos, deceased), the said Pedro G. Cavazos and others are defendants in error; such application to be duly made on petition or motion, as the parties respectively shall be advised.

But upon and after the payment so to be made by the said The United States, under this judgment, into the said bank, and subject to the order of this court hereafter to be made, the said The United States of America so making such payment shall in no wise be held liable or responsible for any further action of the said claimants or order of this court in respect to the disposition of the said funds so paid; and upon making the final order hereafter for such disposition, the party entitled to and claiming the same shall execute a full and proper conveyance of said premises, to be approved by this court, to the said The United States of America, for the purposes aforesaid, and deposit such conveyance with this court before making such order.

The foregoing judgment, consisting of two sheets of paper, with exhibits and annexed papers, granted in open court the day and year above stated; that is to say, February 20th, A. D. 1879.

[SEAL.]

F. M. CAMPBELL,
Clk D't Ct., Cam. Co., Texas.

765 STATE OF TEXAS:

District Court for the County of Cameron.

In the Matter of the Condemnation by the United States, o
Application of STEWART VAN VLIET, of Certain Lands Kno
the Military Reservation of Fort Brown.

At a regular term of said court, held at the court hou
Brownsville, in said county, on the 20th day of February, 187
Present: Hon. John C. Russell, judge of said court.

Order.

It appearing by the record of this court, of the year 1853, th
proceedings in this matter were regularly commenced an
ducted, so far that the verdict of the jury appraising the va
the land in question was duly rendered and received, with t
proval of this court, estimating said value at that day at the s
$50,000:

And whereas, the proceedings seem to have rested at that
and that on account of certain litigations by and between the
ants of said property, that is to say, Mrs. Maria Josefa Cavazos
the one side, and the City of Brownsville on the other, having
pending from said year 1853, up to the month of June, 1876 (
pears by a certified copy of the judgment of the United States c
court, rendered at the city of Galveston, June 5th, 1876, wh
herewith produced and filed in this court), and that by the
ment aforesaid the whole of the said premises known as the sai
military reservation of Fort Brown, was awarded, adjudged
decreed to be the property in fee of the said Maria Josefa Cav
and that the said claimant, The City of Brownsville, had no ti
interest in the said lands and premises:

And whereas, it is made to appear, by the affidavit of Ped
Cavazos, that the said Maria Josefa Cavazos was the mother o
said Pedro G. Cavazos, and that she, the said Maria J. Cavazo
parted this life at the city of Matamoros on the 18th day of No
ber, A. D. 1878, leaving her last will and testament,
766 and executed on the 21st day of April, 1877, and whic
will and testament, being in due form of law, has been
proved and admitted to probate in the probate court of the
county of Cameron, a copy of which, with the probate thereof,
January 31, 1879, are herewith produced and filed in this cou
which it appears that the said Pedro G. Cavazos is the sole de
of all the said lands and premises above mentioned, and is ther
entitled to become the party in these proceedings, in place o
said Maria Josefa Cavazos, deceased:

Now, therefore, on motion of James R. Cox, Esq., attorney a

counsel for the said Pedro G. Cavazos, upon filing in this court a copy of the said judgment of the United States circuit court of June 5, 1876, and also the duly authenticated copy of the said last will, etc., with proof and probate thereof, of the said Maria Josefa Cavazos, deceased, with the affidavit of the said Pedro G. Cavazos bearing date the 12th day of February, 1879, it is ordered that he the said Pedro G. Cavazos, be substituted as claimant and owner of the said lands and premises in place of the said Maria Josefa Cavazos, deceased.

THE STATE OF TEXAS, }
County of Cameron. }

I, the undersigned authority, do hereby certify that the within and foregoing (47) forty-seven pages of paper writing contains a true and correct transcript of all the proceedings had in cause No. 1232 entitled "The United States *vs.* Maria Josefa Cavazos and others," in the district court of the county and State aforesaid, at the February term, 1879, as also a true copy of all papers now on file in my office appertaining to said cause No. 1232.

In testimony whereof, witness my hand and official seal [SEAL.] of office in the city of Brownsville this 11th day of April A. D. 1879.

F. M. CAMPBELL,
Clk D't Ct., Cam. Co., Texas.

767 & 768 STATE OF NEW YORK, }
City and County of New York, Southern District of New York. }

The foregoing answers were made by James R. Cox, the witness therein named, in my presence, and the same were reduced to writing by me and were sworn to and subscribed before me by the said witness, on this, the twenty-fourth day of April, 1903.

In witness whereof, I have hereunto affixed my hand and seal of office on the day and year last above written.

CORNELIUS A. LOUGHLIN,
[SEAL.] *Notary Public in and for the County of New York, State of New York.*

Endorsed: No. 21. In equity, C. B. Combe, executor, etc., vs. James Stillman, *et al.* Interrogatories to James R. Cox, Filed May 18, 1903, C. Dart, clerk, by R. B. Creager, deputy.

769 *Testimony of Thomas Carson.*

In the Circuit Court of the United States for the Southern District of Texas, Brownsville Division.

C. B. COMBE, Executor, ET AL.
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

To Messrs. Denman, Franklin & McGown, San Antonio, Texas, attorneys of record for defendant James Stillman;
To Du Val West, Esq., San Antonio, Texas, attorney of record for defendant Thomas Carson;
To J. D. Childs, Esq., San Antonio, Texas, attorney of record for the intervenors, Mrs. Cavazos *et al.*;
To Mrs. Mary E. Woodhouse, Brownsville, Texas, executrix of H. E. Woodhouse, deceased:

You will take notice that in the above stated cause the plaintiffs will at 10 o'clock a. m. April 11th, 1903, in the United States circuit court room at Brownsville, Texas, before R. B. Creager, one of the examiners of the court appointed to take testimony in this cause, or before some other examiner of said court, begin to take testimony of C. B. Combe, J. J. Cocke, witnesses for plaintiff-, and other witnesses for the plaintiff- in the above stated cause, and continue to take testimony of plaintiffs' witnesses from day to day until the 30th day of April, 1903:

You are respectfully advised that you will then and there have an opportunity to attend the taking of said testimony and to cross examine all of the witnesses examined by the plaintiffs. Examination of such witnesses will be had orally before the examiner in accordance with United States equity rule sixty-seven (67) and the orders of the court herein.

Witness our hands this 12th day of March, 1903.

W. N. PARKS,
C. L. BATES,
Counsel for Plaintiffs.

Exhibit A—C. L. B.

770 SAN ANTONIO, TEX., *March 18th*, 1903.

Judge C. L. Bates, c/o Greer & Miner, Beaumont, Texas.

DEAR SIR: I acknowledge receipt of a notice from you as counsel for plaintiff in the case of Combe *vs.* Stillman, to take testimony of C. B. Combe, J. J. Cocke, and other witnesses for the plaintiff in said cause at 10 o'clock a. m. April 11, 1903, at Brownsville, Texas, before R. B. Creager, examiner, or before some other examiner, said

examination to continue from day to day until April 30, 1903; all in accordance with equity rule No. 67 and the order of court.

I also acknowledge receipt of your notice to take the depositions in the same cause at San Antonio, Texas, of the witness J. J. Cocke, beginning at 10 o'clock a. m. April 1st, 1903, before Edward Dwyer, or W. D. Seeligson, examiners, or either of them, in accordance with equity rule No. 67.

Very truly yours, DU VAL WEST,
Att'y for Thomas Carson, Adm'r, etc., Def't.

Dic.

This in response to your favor forwarded from Waco.

Exhibit B.—C. L. B.

771 Denman, Franklin & McGown, San Antonio, Texas; Leroy G. Denman, T. H. Franklin, Floyd McGown.

Cable address "Denman," San Antonio. No. 134 W. Commerce St., San Antonio, Texas, March 21st, 1903.

COMBE
vs.
CARSON.

Mr. C. L. Bates, c/o Messrs. Greer & Miner, Beaumont, Texas:

DEAR SIR: We acknowledge receipt of your several notices of your intention to take the testimony of witnesses here and at Brownsville.

We will try to arrange our affairs so as to facilitate your taking of testimony.

Yours truly, DENMAN, FRANKLIN & McGOWN.

McG/K.

Exhibit C—C. L. B.

In the Circuit Court of the United States for the Southern District of Texas, Brownsville Division.

C. B. COMBE, Ex'r, ET AL.
v.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Before R. B. Creager, special examiner, appointed to take testimony herein.

STATE OF TEXAS,
County of Bexar.

Before the undersigned authority this day C. L. Bates counsel for the plaintiffs in above cause made oath that on March 12th, 1903,

772 at Beaumont, Texas, he mailed, postpaid, to each of the ties to whom the attached notice Exhibit A is addresse copy of said notice at the places respectively of their add as stated on said notice and afterwards received the letters Exhi B and C hereto attached.

C. L. BATE

Sworn to and subscribed before me on this the fourth day of A 1903.

[SEAL.]

W. S. ANDERSON,
Notary Public, Bexar County, Texa

In the Circuit Court of the United States for the Western Distric Texas, Brownsville Division.

C. B. COMBE, Independent Executor of Stephen Powers, Deceased, *et al.*
vs.
JAMES STILLMAN and THOMAS CARSON, Administrator of the Estate of Maria Josefa Cavazos, Deceased, *et al.*
No. 21. In Equ

BROWNSVILLE, TEXAS, *May* 12, 1903

Pursuant to previous notice, the taking of testimony was resum on the 12th day of May, 1903, at 2 o'clock p. m.

Appearances.

R. B. Creager, Esq., examiner.
C. L. Bates, Esq., and W. N. Parks, Esq., counsel for plaintiff.
Du Val West, Esq., counsel for Thomas Carson and James Stillma
J. D. Childs, Esq., counsel for intervenors, heirs of Mrs. Cavaz and children.

J. B. MARSHALL,
Stenographer.

Mr. THOMAS CARSON, one of the defendants, a witness for plai tiffs, being sworn and introduced, testified as follows, to wit:

773 Mr. Bates stated that before proceeding with the examin tion, he desired to make the following statement:

Counsel for plaintiffs state that they do not introduce the witne upon the main issues in this case, but upon certain points in regar to which they cannot obtain testimony direct except through th said witness, Thomas Carson, defendant, and plaintiffs' counsel wi insists that the cross examination of said witness by his own counse and by the intervenors' counsel, shall be strictly confined to th matters embraced in the examination in chief.

Direct examination by COUNSEL FOR PLAINTIFFS:

Q. Mr. Carson, what is your full name, and age, and place of residence?

A. Thomas Carson, age 65, residence Brownsville, Cameron county, Texas.

Q. How long have you lived in Brownsville, Mr. Carson?

A. Since September, 1871.

Q. Mr. Carson, where were you born and reared?

A. I was born in Ireland, the north of Ireland; I came to the United States in 1855, and lived in Mobile, mostly in Selma, Alabama and Mobile until I came down here in 1871.

Q. Are you acquainted with the defendant James Stillman in this case?

A. I am.

Q. How long have you known him?

A. I have known James Stillman since 1867 or 1868, I don't remember which year.

Q. Did you know Charles Stillman, the father of James Stillman?

A. I did.

Q. Where did he reside at the time you knew him?

A. At the time I knew him he resided in Matamoros, Mexico, that is the time I first knew him, and afterwards I knew him in New York.

774 Q. How long did Charles Stillman reside in Matamoros, Mexico after you first knew him?

A. About a year.

Q. Did Charles Stillman ever reside in Brownsville, Texas, after you knew him?

A. No, sir.

Q. Do you know what business, profession or avocation in life was pursued by Charles Stillman?

A. Yes.

Q. Please state it?

A. He was an importer of general merchandise.

Q. Charles Stillman, then, was not a lawyer?

A. No, he was not a lawyer.

Q. Never practiced law?

A. Never to my knowledge; I know he wasn't a lawyer.

Q. Never pretended to be a practicing lawyer?

A. Never.

Q. Are you not mayor of the city of Brownsville?

A. I am.

Q. How long have you been mayor of the city of Brownsville?

A. I have been mayor since 1879, I believe, going on 24 years.

Q. Are you not also county judge of Cameron county, Texas?

A. I am.

Q. How long have you been county judge of Cameron coun Texas?

A. I think I have been elected four terms, about eight years.

Q. You mean you have been judge, county judge of Camer county, Texas, for the last eight consecutive years?

A. Yes, sir.

Q. And during these eight years have you likewise been may of the city of Brownsville?

A. Yes, sir.

Q. You now hold both of these offices?

A. I do.

Q. Mr. Carson, does James Stillman own any property in Brow ville, Cameron county, Texas?

775 A. In his own name, or as president of the New York Brownsville Improvement Company; this town property b longs to the New York & Brownsville Improvement Co. of which is president.

Q. Then James Stillman is president of the New York & Brow ville Improvement Co.?

A. Yes, sir.

Q. Does Mr. Stillman own any stock in that company?

A. I believe he does.

Q. What property does that company own in Brownsville and i Cameron county?

A. They own a portion of what is known as the townsite.

Q. Does James Stillman own any ranch or farm lands in th county of Cameron outside of the city of Brownsville?

DEFENDANT: I object to that as I don't at present see the rel vancy of it, the materiality is not apparent.

A. Not to my knowledge.

Q. Who is the owner of the ferry franchise across the Rio Grand between Brownsville and Matamoros, Mexico?

DEFENDANT: I would like to have it noted there that I object t all questions of this character upon the same ground that they ar immaterial and irrelevant.

PLAINTIFF: And this objection can extend to all others withou repetition.

A. The Brownsville Ferry Co.

Q. Has Mr. James Stillman any interest in or connection with th Brownsville Ferry Co.?

A. I believe he owns about one-third of the stock.

Q. Is not that franchise and ferry Co. continuously operated now and has been for several years?

A. I believe it is, but as I say, I have no connection with it.

Q. What is the monthly or annual income of the New York & Brownsville Improvement Co. if you know?

A. I don't know. I don't know that they have any source of income except a few rents, very trifling.

Q. Am I to understand from your testimony that James
776 Stillman owns no property in Brownsville or Cameron county, in his own name?

A. Yes, sir.

Q. Is that your testimony?

A. Yes, sir; that is my testimony.

Q. Does he own any stock in any company except the New York & Brownsville Improvement Co and the ferry Co.?

A. In this county?

Q. Yes, sir?

A. Not to my knowledge.

Q. Has he heretofore at any time owned any other property except that heretofore above enumerated as capital stock in this company?

A. Yes; the family owned five leagues in this county, the heirs of his father, but that land is not in his name and he is not the owner.

Q. Does the estate of Charles Stillman own any property in Brownsville or in this county?

A. Not to my knowledge, apart from the New York & Brownsville Improvement Co. and the ranch I have just mentioned, that comprises all the Stillman interests I know in the county.

Q. Have you not been the agent and representative of the Stillman interests in Brownsville for many years,

A. Ever since I came here in 1871.

Q. You have represented the Stillman interests, both James Stillman and the estate of Charles Stillman in Cameron county and Brownsville ever since the year 1871 when you first came here?

A. I have.

Q. Mr. Carson, who are your attorneys in this litigation?

A. Mr. West.

Q. Mr. Du Val West?

A. Yes, sir.

Q. And who else?

A. I have no other attorney employed but Mr. Du Val West.

Q. Didn't Mr. Thomas H. Franklin of San Antonio, Texas, at one time represent you in this matter?

A. He did at one time in this case.

—. ——.

777 A. Yes.

Q. He and his firm represented you for several years in this litigation, did they not?

A. They did.

Q. They filed pleadings for you and represented you in court?

Mr. WEST: In connection with myself.

Q. Most assuredly, in connection with Mr. West?

A. Mr. West is the only attorney I have had any personal
munication with.

Q. Does Mr. Franklin, or his firm, or either, or any of them,
represent you in this litigation?

A. They do, generally.

Q. Well, Mr. Franklin and his firm represent James Stillma
this litigation, do they not?

A. They do, I believe so, I don't know.

Q. Have not you and James Stillman acted in concert and ac
in the defense of this suit?

A. No; I cannot say that we have; I have not consulted
James Stillman about this suit?

Q. You have received no communications from him concernin

A. Not from James Stillman.

Q. Doesn't James Stillman pay the fees of your attorneys in
case?

A. He does.

Q. Then you assume no personal obligation in this matter
attorneys' fees?

A. No.

Q. I understand you to say that Mr. Stillman pays the attorn
fees of the attorneys who represent you?

A. He advances the money for them.

Q. Is not Mr. Stillman likewise represented by Messrs. Shearn
& Sterling, of Wall street, New York city?

A. He is.

Q. They are advisory counsel in this matter?

A. They are his New York counsel I believe for general
poses.

778 Q. I am speaking of this litigation?

A. Yes, in this litigation.

Q. Have you not had frequent communication with these cou
in regard to this matter?

A. Yes, sir; I have had frequent, several communications.

Q. By mail?

A. In regard to this suit; yes, sir.

Q. There is a paper on file, No. 21 in equity, Combe, admi
trator *vs.* Stillman, *et al.*, reply to rule to show cause why recei
should not be appointed, filed July 15, 1897, signed D. H. H
clerk, likewise signed Franklin & Cobbs, Du Val West, solicitors
defendants Thomas Carson, administrator, Thomas Carson, i
vidually"—there is attached to that pleading an exhibit and m
a part of the answer which purports to be an affidavit made by
and subscribed by you, and "Sworn to and subscribed before
this third day of July, 1897, Floyd Frisbie, notary public, Came
county, Texas." I will ask you please, Mr. Carson, to inspect t
affidavit which is attached there and then state who prepared t
affidavit for you?

A. There are so many of these papers that I can't keep the run of them. I can't say who drew the affidavit, I can't remember.

Q. Did you sign and swear to that affidavit, Mr. Carson?

A. I did, that is my signature.

—. ——.

A. Yes, sir; this notary public was in his office, yes, sir; I did, I presume it was in his office because this notary was in his office—Floyd Frisbie, at the time.

Q. Well, who prepared that affidavit, was Mr. West here at the time.

A. I think not; I may have written it up myself.

Q. Well, I want to know about that; I want, in other words, the facts, who wrote it.

A. Well, I can't say, I don't know.

Q. But you do know that neither Mr. West nor Mr. Franklin wrote it?

A. I do.

—. ——.

A. He was.

779 Q. Was he not counsel for the Powers estate in cause M. Kenedy, R. King, *et al. vs.* Thomas Carson, *et al.*, 1,346, district court of Cameron county, Texas, being a partition suit?

A. He was.

Q. Of the Espiritu Santo grant?

A. He was.

Q. Is it not a fact that Mr. H. E. Woodhouse, a *formerly a* resident of this city, brought a suit against yourself and Stillman in regard to this very Fort Brown fund?

A. It is a fact that Mr. Woodhouse brought a suit, but whether against Mr. Stillman and myself I don't remember; I don't remember what was the style of that suit.

Q. You were sued?

A. As administrator; yes, sir.

Q. And Stillman was also sued?

A. Yes, sir; I think so.

Q. And wasn't that case appealed to the circuit court of appeals at New Orleans?

A. It was.

Q. Is it not a fact that Judge Wells and you represented Mr. Stillman in that litigation?

A. He did; that is the Vicente Salinas suit, was it not; I don't consider that that suit and this suit was the same.

Q. It was in regard to this Fort Brown matter?

A. Yes, sir.

Q. It is a matter of fact that that suit was brought to set aside a certain agreement you had all signed in regard to the Fort Brown fund, is it not?

A. That was not the contention of Woodhouse, Woodhouse wanted to repudiate the agreement.

Q. And it was in that litigation that Mr. Wells represented you and Mr. Stillman in connection with Mr. West?

A. Yes, sir.

Q. Hon. Stanley Welch has given you legal advice in this case, hasn't he?

780 A. No, sir.

Q. Upon whose advice was it that you filed a plea in abatement in this case, in which you swore that Dr. Combe had finally settled up and partitioned the entire estate of Stephen Powers?

A. I don't remember on whose advice; I think I did that myself on my own account.

Q. Don't you know as a matter of fact that to this very day the Paredes tract has not been partitioned among the heirs of Stephen Powers, that they and the Grogans hold it in common, at least a large part of it?

A. No, I do not know that.

Q. Will you undertake to say that that whole tract has been partitioned among these people?

A. No, I won't but I don't know that it has.

Mr. WEST: It would be all hearsay.

Q. Well, in that plea, Mr. Carson, you made out that affidavit?

A. Well, if I made the affidavit, I made it from some papers or records.

Q. You made an affidavit that the entire estate had been settled up and the partition then distributed, now what I want to know is, don't you know it to be a fact that the Paredes tract is still held in common by the heirs and devisees of Stephen Powers, deceased.

A. I don't know it to be a fact?

Q. You don't know that it is not a fact?

A. No.

Q. Mr. Carson, you were a party to the suit of M. Kenedy, R. King and others *vs.* Thomas Carson, administrator, No. 1346, in the district court of Cameron county?

A. I was.

DEFENDANT: Are you going to ask him anything about that partition proceeding; if you are I want to interpose an objection.

Q. Mr. Carson, I submit to your inspection a paper which purports to be an agreement made and entered into on the 11th of November, 1885, by James Stillman, of New York, in his own right, and as executor of the will of his father, and as an heir of that estate,

781 acting by and through you as his agent and attorney, and also between Francis E. McManus, of Corpus Christi, Texas, in and by which Stillman agreed to pay certain fees to McManus, to defend*ant* the suit of M. Kenedy and R. King, *et al. vs.* Thomas Carson, administrator, No. 1346, in the district court of Cameron county, Texas. It purports to have been filed for record August 12, 1896, at 11:60 a. m., recorded in Book A, miscellaneous records, pp.

32, 33, 34 and 35 Cameron county, Texas; will you kindly look at that paper and state whether you executed it as the agent of Stillman, or not, or whether it is a copy of the paper that you executed?

A. This, of course, is a copy of the paper; there is another one.

Q. Just talk about that one; is that genuine? Did you execute the paper which that purports to be a copy of?

A. I did.

Q. And as agent of Stillman?

A. I did.

Q. Did you have authority from Stillman to execute that paper?

A. No; he didn't know anything of it at the time; I advised him of it afterwards.

Q. Then what did he do?

A. He never agreed to it.

Q. He didn't know?

A. I advised him of it afterwards; that is a copy of an agreement I made with Mr. McManus.

Q. Have you got the letter that Stillman wrote you regarding it?

A. I don't know; I don't think he ever wrote me a letter about it.

Q. How did you know he didn't approve of it?

A. Because I was in New York subsequent to that and he wanted to know why I made such an agreement with McManus, and I told him that I had to do it as a matter of expediency.

Q. Don't you hold a power of attorney from Mr. Stillman and from the New York & Brownsville Improvement Co.?

A. I do.

Q. And have you not held such a power for years?

A. I have.

782 Q. Is it on record here?

A. It is.

Q. There is a similar contract, Mr. Carson, executed by you on behalf of the New York & Brownsville Improvement Co., you executed that contract did you?

A. I did, it is a similar contract, the same thing.

Q. Then you executed a similar contract for yourself as administrator?

A. I did.

Q. Mr. Carson, will you kindly identify these papers just by writing your name on the back of each one?

A. (The witness does as requested, stating:) I won't read them through; I assume they are correct copies.

PLAINTIFF: If they are not correct the record will show it.

Q. Mr. Carson, is it not a fact that pursuant to this contract Mr. McManus did appear and represent your interests and the interests of Stillman in that partition suit No. 1346?

A. It is. Allow me to state that the contracts were made subsequent; he was acting for me prior to these contracts.

Q. Mr. Carson, here is a paper in law suit No. 248 on the law

docket of the United States circuit court at this place, Heirs o Miguel Salinas, *vs.* William Kellogg, *et al.*, this is the suit in which judgment was rendered in favor of yourself and Mr. Stillman fo Fort Browne; this paper was filed 26th day of April, A. D. 1887; i is an agreement as to certain titles and common source of title; you have admitted in your answer that you signed this paper, but I want to ask you some questions about it; look at it and see if that is your signature there; it is the first one on the list, Mr. Carson?

A. Yes, sir; that is my signature, I know the purpose of this also

Q. Well, in that case, Ballinger, Mott & Terry represented James Stillman, didn't they?

A. They did at one time; does it state there at that time.

Q. Didn't they represent them in that suit; that is a fact Ballinger Mott & Terry?

783 A. Well, I don't know, they have had so many. (Witness looks at paper and answers.) Yes, sir.

Q. Do you know the signature of Ballinger, Mott & Terry?

A. I think that is Mr. Mott's signature.

Q. And that is a genuine paper?

A. Yes, sir.

Q. Mr. Mott was a member of the firm of Ballinger, Mott & Terry?

A. He was.

Q. Mr. Carson, in this suit, this present suit, the plaintiffs, in their bill, allege that in the case of Kenedy and King and others *vs.* Carson and others, No. 1346 in the district court of Cameron county, which was the partition suit of the Espiritu Santo grant, it is alleged, I say, by the plaintiffs, that the report of the commissioners in that case—the partitioners who made the partition—had been extracted from the files of the court and could not be found, and the plaintiffs in their bill propounded to you this interrogatory:

"You are required to answer whether defendant Carson ever saw, or ever had in his possession, the report and map of the surveyor and commissioners hereinabove referred to in said cause No. 1346, and when and where he last saw them, and when and where he last had them in his possession, and from whom he obtained them and what he did with them, and in whose hands and possession he last saw them, and if he knows where they are, and if he has copies of same, and if so, who made such copies, and when and where such copies are now"—By inadvertence, I presume you wholly failed to answer that interrogatory in the bill; your answer disregarded that interrogatory; I now ask if you know anything about the original of the report made by the commissioners of partition in that case?

A. I do not, nor do I remember ever having seen the original of the report; of the decree, yes.

Q. I also ask you if you have any copy of that report

A. I have copies of parts of the report in my office, but they are

not certified to and are mere office copies made by a clerk of
784 mine, and I can't say anything about them; I was looking over some of them today.

Q. You say that these copies of parts were made by your clerk?

A. Yes, sir.

Q. In your office?

A. Yes, sir.

Q. Is it not a fact that you usually keep a clerk there to copy papers?

A. It is a fact that I did, but for the past three years I have not had any.

Q. But at that time that that copy was made you kept Mr. Sam Belden there to make copies?

A. I did.

Q. Must it not have been true that your clerk had the original when he was making that copy?

A. I think he must have had the original, or copied from a copy of the original, but I have never seen the original myself.

Q. Then I understand your testimony to be that you never saw the original and don't know where it is?

A. I don't know where it is.

Q. But you do say that your clerk made copies of parts of what purports to be the report?

A. He did.

Q. Have you ever applied to the district clerk of Cameron county for that paper?

A. I have not.

Q. Have you made any attempts in recent years or months to obtain it?

A. I have not.

Q. You are the administrator of Maria Josefa Cavazos, deceased are you not?

A. Yes, sir.

Q. With the will annexed?

A. With the will annexed.

Q. You were appointed such administrator 20 years ago in
785 January last, were you not?

A. I can't say as to the exact date; of course, the papers will show that.

Q. Well, the papers show in January 1883. Mr. Carson, what did that estate inventory when you were appointed administrator?

A. I can't say that; I can't carry those figures in my head.

Q. Can't you approximate it?

A. No, I cannot.

Q. What was the proved debt, the aggregate of proved debts against that estate?

A. That I cannot remember.

Q. Was it not a very large estate Mr. Carson?

A. In land, yes, and the garrison claim; they claimed the w
of the garrison.

Q. Has there ever been any distribution to the heirs and dev
in that estate?

A. Yes, each of the heirs were paid out of the sale of some
to Captain King, out of the San Juan de Carricitos.

Q. How much, in the aggregate?

A. I know the first payment I made was $5,000 each; I th
there was a subsequent payment of $2,000 each; I think so,
receipts are on file.

Q. Have you ever filed any account of your administration
that case?

A. I have filed reports.

Q. How many?

A. I can't say how many, they are all on file in the court ho

Q. Did you ever file more than one?

A. I think I did; I am not sure; since I have been county ju
of course, I have filed no reports.

Q. You have filed no reports?

A. Yes, there has been a report since I was county judge,
there was a special judge at one time.

Q. You claim an interest in the Fort Brown fund for that est
do you not?

786 A. I do.

Q. Have you read the answer of James Stillman, a defe
ant in this case?

A. I have read several answers that Mr. Stillman has made.

Q. I refer to his printed answer in which he sets forth his acco
of his dealings with that fund, have you read that?

A. I have.

Q. Have you observed that that account absorbs that entire fun

A. I have.

Q. That is a fact?

A. That is his statement of it.

Q. I will ask you if you have taken any steps in this case to obt
a decree against James Stillman for the interest which the estate y
represent claims in that fund?

A. I have not thought it was necessary to do it.

Q. Isn't it a fact, Mr. Carson, that you have done everything
your power to defeat this suit and to prevent it from coming t
final hearing upon its merits?

A. It is not a fact.

Q. Did you not file a plea to the jurisdiction in this case?

A. I did.

DEFENDANT: I also object to that; the record speaks for itself.

Q. Did you not file a plea in abatement, claiming that Dr. Coul
was not a proper party in this case?

A. I did, but I have no objection, or interest, or desire, to defe the proper settlement of the case.

Q. Well, why have you filed pleas trying to knock the case out c court without an adjudication?

A. Perhaps on the advice of my lawyer.

Q. The same attorneys who were advising Mr. Stillman also, wer they not?

A. That I cannot say; that is out of my knowledge.

Q. Nevertheless, you have filed pleas in this case, the object an purpose of which was to throw this case out of court without an ad judication?

787 A. I have always considered they had no interest in th property and I wanted to get all I could for the Cavaz estate.

Q. Don't you know that in this suit is the only chance you hav ever had to get a dollar for these heirs?

A. No, sir; I will get all the heirs are entitled to from Mr. Stil man.

Q. Did you see Mr. Stillman's sworn statement, in which he al sorbs all the fund?

Defendant objects as leading, irrelevant and immaterial.

A. I did.

Q. Don't you —, Mr. Carson, that by filing a cross bill in this cas against Mr. Stillman, that you could obtain a decree against hi for any money due your estate out of that fund?

Defendant objects as leading and misleading and argumentativ and irrelevant and improper and calling for the expression of a leg opinion from a person who is not upon the stand as a lawyer.

A. I don't know that I could obtain a decree.

Q. Have you never been so advised?

A. Never.

Q. Do you intend in this suit to claim a decree against Jame Stillman for the share owned by the estate of Maria Josefa Cavaz in that fund?

DEFENDANT: That question is objected to because it is immateri and irrelevant and calls for the supposed intention of what may may not occur.

A. I have no such intention now; but circumstances may poi to the advisibility of doing so, in which case I will.

Q. Of how many estates are you the administrator in Camero county, Texas?

DEFENDANT: I object to that question as being ir-elevant and in material and not pertinent to any issue in this case, and also lea ing.

A. Only two now that I remember of.

Q. Mr. Carson, on July 14th, 1897, I believe it was?

A. 1887.

788 Q. 1887, judgment was rendered in suit 248, Heirs of Miguel Salinas against Kellogg and others, do you remember that occasion?

A. I do.

Q. Do you know Rud Kleberg?

A. I do.

Q. Was he in attendance on that court as United States district attorney at that time?

A. Yes, sir; I don't remember whether he was in court that day or not.

Q. You remember he was in attendance at that term of the court?

A. I think he was; I was in court at the time; I don't remember.

Q. Well, you remember that he intervened in that suit on behalf of the Government, don't you?

A. I do.

Q. Mr. Carson, the Department of Justice, at Washington, in its records, shows the following telegram sent by Rud Kleberg on the 11th day of July, 1887, namely,

"BROWNSVILLE, TEXAS, *July 11th*, 1887.

Hon. A. H. Garland, Attorney General U. S., Washington, D. C.:

In case of Salinas Heirs against William Kellogg, involving Fort Brown reservation, all parties claiming title are in accord and the Government also by pleas. Proposition of claimants is to enter agreed judgment vesting title in Government and decreeing that appropriation be paid into registry of court subject to arbitration or partition to be agreed hereafter among claimants. I believe good title can thus be made. Answer instructions.

RUD KLEBERG,
U. S. Attorney."

Did you at that time know anything about the sending of that telegram?

A. I did not.

Q. Did you know anything about the matters mentioned in it?

A. Yes, that was the general discussion and conferences among our attorneys; of course, that was the purport of our conferences, to take a judgment and divide the money by arbitration.

Q. That was the joint understanding?

A. Yes, sir.

789 Q. That judgment was to go in by agreement?

A. Yes, sir.

Cross examination:

Q. You have stated, Judge Carson, that you were now county judge and mayor and have been acting as such for some eight years

past. I will ask you if since you have been county judge you have taken any orders or acted in your capacity as administrator before your court in this Cavazos estate?

A. I have not.

Q. Have any orders or decrees been taken in the Cavazos estate while you have been county judge?

A. Yes, sir; by a special judge.

Q. Was a special judge appointed?

A. Yes, sir.

Q. Who was the special judge?

A. Augustin Celaya.

Q. What orders, if you remember, were taken by this special judge, in connection with this estate, generally speaking?

A. I cannot tell you, I think there was a report to enter and he approved the report.

Q. What portion of the estate of Cavazos still remains in your hands as administrator?

A. Principally the Fort Brown claim.

Q. Have they got anything besides that?

A. Yes, sir; there are some unsold lands.

Q. Have you sold any lands for this Cavazos estate outside of the lands in the San Juano de Carricitas?

A. Never.

Q. The Cavazos estate was entitled to a large part of the Espiritu Santo grant, was it not?

A. Yes, sir.

Q. Did you make any sale of any part of the Espiritu Santo grant?

A. I did not.

Q. Have any lands in the Espiritu Santo grant been sold?

790 A. Yes, sir.

Q. By whom were the sales made?

A. By the heirs.

Q. By the Cavazos heirs?

A. They sold their derechos as they are known in this country; their rights; they have all sold more or less, some sold their entire interest.

Q. Did you join in any deeds in connection with them?

A. No, sir.

Q. Made no sales at all?

A. No, sir; and approved no sales.

Q. Counsel was asking you with reference to money advanced by James Stillman, will you please state under what conditions these moneys were advanced by Stillman to you?

A. Under an agreement between Mr. Stillman and Maria Josefa Cavazos, an old agreement that he should advance moneys sufficient to clear the title and to defend any kind of litigation that might be brought afterwards.

PLAINTIFF: Is that agreement in writing?

A. Yes, sir.

PLAINTIFF: I object to his stating anything about it here if it in writing, upon the ground that the writing is the best evidence.

Q. What was the balance of the understanding with reference the advances—was there any understanding with reference to t advances as to securing an appropriation for Fort Brown?

PLAINTIFF: Are these understandings in writing, Mr. Carson?

A. The Fort Brown property was included in the agreement the time, that was my recollection.

PLAINTIFF: In the written agreement?

A. I think that property, as well as all other property that w then in litigation.

PLAINTIFF: I object to his stating anything that was in writi

Q. In other words, you say that there was an agreement writing between Stillman and Mrs. Cavazos, that he (Stillman) w to make advances to her for expenses incurred on accou
791 of their common title to the land in the Government res vation.

The intervenor objects to the answer on the ground that t writing is the best evidence.

A. That agreement, as I understand it, was part of the consider tion of Mr. Stillman's half interest in the Fort Brown property.

Q. And the moneys advanced to you then by Mr. Stillman, we on account of the Cavazos' and chargeable to their interest?

A. Yes, sir.

Q. Were the advances made by Mr. Stillman to your attorney and the advances made by Mr. Stillman for taxes, and the advanc made by Mr. Stillman to your attorneys in the partition suit a expenses of a similar character under the terms of that agreement

A. That is my understanding.

PLAINTIFF: It is understood that our objection go to all of this.

Q. In other words, then, if Mr. Stillman pays out any money f the estate of Cavazos, it is to constitute a charge against whatev money or funds the Cavazos estate may realize in this case, is tha true or not?

A. No, I think it was to be divided between them.

Q. It was to be a charge against?

A. A charge against the whole of them, Mr. Stillman for one-hal and Cavazos for the other.

Q. I will ask you if the administration of the Cavazos estate is sti pending in the county court over there?

A. It is.

Q. Are there any claims or debts on file over there against thi estate?

A. Yes, sir.

The INTERVENOR: Note our objection to that; if they are on file the filing of the papers is the best evidence; this evidence is irrelevant and immaterial; there are no pleadings in the answer of Carson, administrator, to warrant this evidence.

Re-direct examination:

792 Q. You say that you have been county judge here for about eight years?

A. Yes, sir.

Q. Isn't it a fact that you have been county judge from 10 to 14 years?

A. I was thinking about only four terms.

Q. Were you not county judge in 1895, when I came here?

A. That would be only eight years.

DEFENDANT: The record is objected to because the record of his appointment and qualification as county judge is the best evidence.

A. That is my recollection, Mr. Parks, but 1895 would only give it 8 years.

Q. When were you appointed administrator of the estate of Maria Josefa Cavazos?

A. Well, Mr. Bates says in 1883.

Q. How long after you were appointed that you became county judge of this county?

A. I said eight years, that would make it into 1895, that would make it 10 or 12 years, I think I was only in for four terms.

Q. You say that you had a special judge appointed in that case to pass upon some special account, Augustin Celaya?

A. Yes, sir; a special judge appointed

Q. In what manner was he appointed?

A. He was appointed, I believe, by the governor, under the law.

Q. Wasn't he county attorney of Cameron county at the time; think for a moment?

A. I think he was.

Q. Isn't it a fact that he was selected by agreement of you and others as a special judge?

A. Yes, sir; it is a fact that I didn't object to him; I don't know who selected him, but I think he was appointed by the governor under the law; I think Judge Mason was here at the time.

Q. Isn't it a fact that he resigned his position as county attorney in this county to accept that appointment to approve certain accounts that were then offered against the estate?

793 A. No, I don't know if that is a fact.

Q. Well, after he approved these accounts didn't he immediately resign that position and wasn't he at once re-appointed county attorney by your commissioners?

A. Really, I don't remember how long before he resigned, or when he was re-appointed.

Q. He was not special judge at the time was he?

A. (No response.)

Q. Isn't it a fact that there was an account made out by you against the estate of Maria Josefa Cavazos, in which you claim $12,000 as administration fee, and James B. Wells, an attorney at law of this place, put in a bill for $6,000 as professional fee, making about $18,000.00 altogether?

A. I don't remember; the record is there.

Q. Then Augustin Celaya was appointed to pass on that account and did?

A. He passed on the accounts, whatever they were.

Q. And after that he resigned the position of special judge and was reappointed county attorney of this county by the county commissioners' court of this county?

A. I believe that is true, I don't remember though the facts.

Re-cross examination:

Q. Do you know, as a matter of fact, whether Celaya has ever resigned his appointment as special judge?

A. I do not, but his receiving another office would preclude that he has been elected to other offices since; that is why I believe he did.

Q. You don't know then?

A. I don't know as a matter of fact.

PLAINTIFF: Then have you from that time to this made your annual reports as required by the statutes of the State of Texas showing the condition of that estate and your management thereof to this special judge, or any other special judge?

A. No, sir.

DEFENDANT: Has there been any change in the condition
794 of this estate since the time this special judge passed upon these accounts, any change such as would warrant the filing of any report?

A. No, sir.

Q. So that the property of the estate is in the same condition now as it was when the matter was heard by the special judge?

A. As far as the relations of the administrator towards the estate are concerned, yes, sir; the heirs have disposed of property since but of which I have not approved.

Direct examination by the INTERVENOR:

Q. I believe you stated that you had not filed any annual exhibit or report of the condition of this estate since you qualified as county judge of this county, I believe you stated that you did not?

A. Except to the special judge.

Q. That was when Mr. Augustin Celaya was appointed in 1895 by Governor Culberson?

A. Yes, sir.

Q. Well, you have never made a final report of the condition of that estate, have you?

A. No, I have never been in shape to make a final report.

Q. The report that you made to Mr. Celaya was not an annual exhibit, was it, of the condition of the estate, but simply a report of some claims that had been filed against the estate, is that not a fact?

A. I believe it gave an exhibit of the estate up to that time.

Q. You believe so?

A. Yes, sir; the report is on file.

Q. You are certain that you have not filed any account or statement with reference to the condition of the estate since Mr. Celaya qualified in 1895 as special judge?

A. Yes, sir.

Q. You are also certain that Mr. Celaya has held and qualified to other offices since that time?

A. Yes, sir; I am certain he has.

Q. You are certain he has vacated the office of special judge?

A. In that way; he has vacated the office by law; he is
795 county treasurer now.

Q. How long has he been county treasurer?

A. This is his second term.

Q. You state that there has been no occasion for filing any report of the condition of that estate since 1895?

A. No.

Q. Did not Mr. Stillman collect the $160,000.00 for this estate in May, 1895?

A. Yes, sir; Mr. Stillman's agent, Mr. Stillman and myself did.

Q. Have you ever filed a report of that collection and the disposition of that money and how the disbursements were made?

A. I have not.

Q. Not since 1895?

A. No, sir.

Q. Have you ever made any effort to have a special judge appointed to have a report of that account made?

A. No; I have never made any application.

Q. That money has been in the hands of Mr. Stillman since May, 1895, has it not?

A. I understand it is in the court.

Q. Well, Mr. Stillman collected it, I believe, did he not? You did not handle it?

A. Never.

Q. Never had it in your hands?

A. No, sir.

Q. In fact, it has never been in the State?

A. I understand it has been in the court.

Q. It wasn't under the jurisdiction of this court until brought down by Judge Maxey?

A. No, sir.

Q. You never had any of that money in your hands, did you?
A. No, sir.
Q. Never have exercised corporeal control over it?
A. No, sir.
Q. And never have asked for it?
796 A. No, sir.
Q. Never demanded of Mr. Stillman that he would pay over?
A. I went to New York to see if we could carry out that arbitration and make a settlement.
Q. Have you demanded it of Mr. Stillman?
A. Yes, sir.
Q. Have you demanded it in a legal way?
A. No, sir.
Q. You have taken no legal steps to recover it?
A. No, sir.
Q. I notice here a certified copy of the appointment of Mr. Celaya as county judge, special judge, in March, 1895, and some claims here brought forward, and among these claims I see a claim here No. 1, a claim for the sum of $3,348.49, said claim being duly entered upon the claim docket of this court upon the 25th day of July 1890 and since continuously pending for approval / now what was that for, Judge?
A. I can't say. Is it not there?
The INTERVENOR: No, sir. This is a certified copy of the proceeding of Mr. Webb, the clerk.
A. The voucher will show, I can't remember what it was.
(The intervenor reads the paper.)
Q. You cannot answer that question then?
A. No, sir.
Q. Now, No. 2, I will ask you this one, Judge.

(Intervenor begins the reading of second document, subsequently discontinues it and proceeds with the examination of the witness as follows:)

Q. I believe you state that the matter now under litigation is the major portion of this estate, the residue of the estate of Maria Josefa Cavazos, but that there are lands still belonging to the estate that are unsold?
A. I did.
Q. You say you have sold some of the lands?
797 A. Some of the lands, I did.
Q. Do you know how much A. B. Hill has sold of the lands of Pedro G. Cavazos?
A. I do not recolcect.
Q. Has he sold something like 3000 to 5000 acres?
A. I do not know, but I think you are about correct, that is of Pedro G. Cavazos's interests.

Q. You qualified A. B. Hill as administrator?

A. Yes, sir; I appointed him.

Q. Part of that administration is part of this Fort Brown property, is it not?

A. No, I think not.

Q. Doesn't the inventory state that there is an interest in the Fort Brown $160,000.00?

A. I can't remember what the inventory shows.

DEFENDANT: As to what has been done by Mr. Hill in the matter of the estate of Pedro G. Cavazos, the record of the court wherein it is pending is the best evidence; we object to the testimony.

Q. You stated just now that some of the heirs had parted with or sold their interest in the estate of Maria Josefa Cavazos, can you tell us who has?

A. I said nearly all of the heirs.

Q. Just please give us the names?

PLAINTIFF: These transfers have been made in writing.

Q. Can you give me the names?

A. I can give you the names of some of them: Don Pedro G. Cavazos himself has sold nearly his entire interest.

Q. I am only talking about the Fort Brown property?

A. They have not sold Fort Brown, they have been selling other lands.

PLAINTIFF: Wasn't Pedro G. Cavazos paid by the Government $5,000 for the cemetery in the Fort Brown reservation here?

A. He was paid $4,000 or $5,000, I think that was the
798 amount, in U. S. bonds.

PLAINTIFF: The cemetery was condemned in the United States district court here and the money deposited?

A. Yes, sir; with Mr. Dart, the same clerk of the court.

PLAINTIFF: And afterwards paid to Pedro G. Cavazos?

A. Yes, sir; to Pedro G. Cavazos, or his attorney, James R. Cox.

The INTERVENOR: We object as the records of the court are the best evidence of these facts and because it is irrelevant and immaterial.

The INTERVENOR: Did Cox, or Pedro G. Cavazos——

A. Mr. Dart is here now; he can tell you best.

Q. Do you know of your own knowledge whether it was Cox or Pedro G. Cavazos?

A. No, but it was between them that they got it.

(The proceeding was here adjourned until 10:30 o'clock a. m. May 13th, 1903.)

Signed this 18th day of May, 1903.

THOMAS CARSON.

Subscribed and sworn to before me this 18th day of May, 1903.

R. B. CREAGER, *Examiner.*

STATE OF TEXAS,
County of Cameron.

I, J. B. Marshall, duly appointed stenographer in the above styled and numbered cause, do hereby certify that the foregoing thirty-two pages contain a true and correct transcript of the testimony of the witness Thomas Carson, offered at the examination of witnesses held before R. B. Creager, Esq. J. B. MARSHALL.

(Endorsed: Eq. 21 Publication made May 20, 1903, by order of court, C. Dart, clerk, Filed May 20, 1903, C. Dart, clerk.)

799 *Petition for Appeal.*

C. B. COMBE, Independent Executor of the Estate of Stephen Powers, Deceased, and C. B. Combe, Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph K. Combe, and Emile P. Combe, Complainants,

vs.

JAMES STILLMAN, THOMAS CARSON; THOMAS Carson, Administrator of the Estate of Maria Josefa Cavazos, Deceased; Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Mat Gerhard, J. L. Landrum, Juan Salinas, Francisco Yturria, Henry Miller, Charlotte Miller, Charles S. Dana, Marie Grogan Dana, Frances E. Landrum, Agnes Anastacia Brown, J. A. Brown, Lilian Mary Hicks, Administratrix of the Estate of Annette P. Hicks, Deceased; Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Mary B. Woodhouse, Independent Executrix of the Estate of H. E. Woodhouse, Deceased, Defendants; Pedro G. Cavazos, Miguel Garcia Cavazos, Francisca Garcia Cavazos de Treanor, Rafaela M. de Garcia Cavazos, Rafael G. M. Cavazos, Adelede G. M. Cavazos, Josephina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, Jose G. M. Cavazos, G. H. Giddings, S. J. Brooks, Receiver; C. L. Bates, W. N. Parks, Duval West, Intervenors.

No. 21. In Equity.

To the honorable judges of the circuit court of the United States for the western district of Texas, in equity, sitting at Brownsville, Texas:

Now comes your petitioner, James Stillman, one of the defendants in the above entitled and numbered cause, and, without waiving his

several pleas and defenses to the jurisdiction of this court to hear and determine this cause, but specially insisting on and asserting said pleas and defenses, appearing herein solely for the purpose of praying for an appeal herein direct to the Supreme Court of the United States, on the question of the jurisdiction of this court to hear and determine this cause, represents to the court that there is manifest error committed, to his injury, by the final decree pronounced against him and his co-defendants herein by this court in this cause on the 12th day of December, 1903, at the present
800 term of this court, which court is still in session, and by the interlocutory orders and decrees heretofore pronounced in this cause by this court during the progress of this cause, in and by which said interlocutory orders and decrees and final judgment this court assumed and asserted jurisdiction of this cause, and appointed a receiver herein, and required your petitioner to pay into the custody of this court a large sum of money as a fund for distribution by this court, and has adjudicated the right and title to said fund and ordered its distribution, in this:

That there is no controversy between citizens of different States herein. The complainant herein was a citizen and resident of the State of Texas at the time of filing of the original bill of complaint herein instituting this suit and has ever since been and is now a citizen of Texas; and some of the defendants herein were citizens and residents of the State of Texas at the time of filing of said original bill of complaint herein instituting this suit, have ever since been and still are citizens and residents of the State of Texas; and your petitioner was at the institution of this suit, has ever since been and still is a citizen and resident of the State of New York, and therefore there was not, at the time of the filing of said bill of complaint instituting this suit, nor at any time thereafter, a diversity of citizenship between the complainant herein and the defendants herein, which fact fully appears in said original bill of complaint, and in all subsequent pleadings filed herein by complainant; that it is not contended by complainant, and was not so contended when said original bill of complaint was filed, nor at any time since then, that this court has any jurisdiction of this cause because of any diversity of citizenship between the complainant and any one of the defendants, but the sole ground upon which the complainant asserts jurisdiction in this cause in this court is that his bill of complaint herein, and this suit, is each and both ancillary to a certain other action at law at one time pending in this court, on the law docket thereof, entitled, "Heirs of Miguel Salinas *vs.* William L. Kellogg, *et al.*, No.
248," in which action final judgment was entered on the 14th
801 day of July, 1887, which said judgment was never set aside nor any writ of error prosecuted therefrom, but which now stands a valid subsisting judgment at law, while on the other hand it is contended by the defendants herein that neither said complainant's bill of complaint nor this suit is ancillary to said action No. 248, Heirs of Miguel Salinas *vs.* William L. Kellog *et al.*, hereinbefore referred to, nor ancillary to the said final judgment ren-

dered in said action, nor any proceedings had in said cause, nor any decrees or orders rendered or made thereon.

Wherefore, your petitioner, James Stillman, considering himself aggri-ved, prays an order granting an appeal from said final decree and interlocutory orders and decrees in this cause, taking and exercising jurisdiction over this cause, as aforesaid, to the Supreme Court of the United States, as authorized by section V of the act of Congress of the United States, approved March 3, 1891, and herewith offers his bond in any sum to be fixed by the court, and likewise files herewith his assignments of error.

(Signed) DENMAN, FRANKLIN & McGOWN,
Attorneys for Defendant James Stillman.

(Endorsed:) No. 21 Eq. C. B. Combe, *et al. vs.* James Stillman, *et al.* Petition for appeal. Filed Dec'r 12th, 1903. C. Dart, clerk.

802 *Assignments of Error.*

C. B. COMBE, Independent Executor of the Estate of Stephen Powers, Deceased, and C. B. Combe, Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph K. Combe, and Emile P. Combe, Complainants,

vs.

JAMES STILLMAN, THOMAS CARSON; THOMAS Carson, Administrator of the Estate of Maria Josefa Cavazos, Deceased; Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Mat Gerhard, J. L. Landrum, Juan Salinas, Francisco Yturria, Henry Miller, Charlotte Miller, Charles S. Dana, Maria Grogan Dana, Frances E. Landrum, Agnes Anastacia Brown, J. A. Brown, Lilian Mary Hicks, Administratrix of the Estate of Annette P. Hicks, Deceased; Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Mary B. Woodhouse, Independent Executrix of the Estate of H. E. Woodhouse, Deceased, Defendants; Pedro G. Cavazos, Miguel Garcia Cavazos, Francisca Garcia Cavazos de Treanor, Rafaela M. de Garcia Cavazos, Rafael G. M. Cavazos, Josephina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, Jose G. M. Cavazos, G. H. Giddings, S. J. Brooks, Receiver; C. L. Bates, W. N. Parks, Duval West, Intervenors.

No. 21. In Equity.

In the matter of appeal in the above styled and numbered cause by the defendant, James Stillman, comes sad James Stillman and

shows that in the record and in the proceedings in the above entitled matter there is manifest error, which he assigns as follows:

First. The trial court erred in holding that it had jurisdiction in this cause for any purpose and erred in each and every order made by it in the progress and trial of this cause, whether upon application of the complainants or intervenors, because there was no controversy herein between citizens of different States, there being no diversity of citizenship between complainants and defendants, or between intervenors and defendants and complainants; and because this suit is an original one and not a proceeding ancillary to any action at law or suit heretofore or now pending in this court.

Second. The court erred in holding that it had jurisdiction in this suit for this: It appears from the face of complainants'
803 bill that he is a resident citizen of the State of Texas, and that Leocardio Salinas, Antonio Salinas, Melchior Salinas, H. E. Woodhouse and other defendants in the cause are likewise resident citizens of the State of Texas, and said facts of citizenship likewise appear in other portions of the record herein, and there is, therefore, no such diversity of citizenship as to give this court jurisdiction of this suit; and it further appears upon the face of complainant's bill that the jurisdiction of this court to hear and determine this cause is asserted solely upon the ground that complainant's bill and this suit is ancillary to the action at law No. 248, entitled, "Heirs of Miguel Salinas *vs.* William L. Kellogg, *et al.*," formerly pending in the circuit court of the United States for the western district of Texas, and ancillary to the final judgment rendered in said cause; and it further appears by the several orders, judgments and decrees of this court rendered herein, and by the certificate of the court granting the appeal herein, that the jurisdiction of this court to hear and determine this suit is held and maintained by the court solely upon the ground that complainant's bill and this suit is ancillary to the said action of the "Heirs of Miguel Salinas *vs.* William L. Kellogg," and ancillary to the final judgment rendered therein; whereas in truth and in fact neither complainant's bill nor this suit is ancillary to either the said action at law of Heirs of Miguel Salinas *vs.* William L. Kellogg, hereinbefore referred to, nor ancillary to the judgment rendered in said cause; and that complainant's bill is in truth and in fact an independent original bill, and this suit is an independent original suit, for this: Said action of the Heirs of Salinas *vs.* William L. Kellogg was an action at law brought for the recovery of the possession and title of a certain tract of land known as the Fort Brown reservation, and for the recovery of rents thereon, and was in form an action of tresspass to try title, as provided for by the statutes of Texas defining actions for the recovery of land and regulating the pleadings and procedure in such actions. Final judgment was entered in said action on the 14th day of July, 1887, adjudicating and decreeing that James Stillman and Thomas Carson
804 administrator of the estate of Maria Josefa Cavazos, do have and recover in moieties, the land described in said actions,

and to which action, the parties under whom complainant claims i
the present suit were parties defendant. Said judgment was neve
set aside, nor was there any writ of error sued out therefrom. Th
finality of the decree in said action of Salinas *vs.* Kellogg, above r
ferred to, is fully recognized and averred by complainant herein
and the present suit was not brought either to set aside said judg
ment, to open up same, to reform same, or to amend same, nor t
disturb same in any way; nor to secure any process upon same; no
to ask any further or additional relief thereunder; nor to enjoin
modify or stay any proceedings thereunder; nor to recover, partitio
or distribute any fund paid into court thereunder; nor to adjudicat
any right of any character to any fund paid into court thereunde
After the rendition of said final judgment in said action of Salina
vs. Kellogg, the successful parties thereto, viz: James Stillman an
Thomas Carson, as administrator, as aforesaid, conveyed the lan
adjudicated to them in said suit to the Government of the Unite
States, in full and complete title, and the present suit fully recognize
the title of the Government of the United States under said convey
ance as good and perfect and does not seek in any manner to dis
turb same. The purpose of the present suit is to engraft upon th
money paid by the United States Government to the said James
Stillman and Thomas Carson, as administrator, as aforesaid, under
the conveyance so made by them to the United States Government
as aforesaid, a trust in the interest of complainants herein, which
trust is alleged to grow out of an agreement between complainant
or those under whom he claims, and James Stillman and others
which agreement was no part of the record in the said case of Salinas
vs. Kellogg, was never called to the attention of the court trying said
case, nor to the district attorney representing the United States Gov-
ernment in said case, but is an independent agreement made with
reference to the purchase money paid by the United States Govern-
ment for the premises conveyed to it, as aforesaid; and what-
805 ever trust may have arisen with reference to said money
grows solely out of said agreement, and does not subject said
money to the custody of this court in any way, nor require the pay-
ment of same in any way into the custody of the court in the said
cause of Salinas *vs.* Kellogg, but, on the contrary, specially provides
that said money, when collected, shall be paid to certain named
arbitrators to be by them distributed in accordance with the terms
of said agreement entirely independent of any court.

Third. For the reasons set forth above in second assignment, the
court erred in granting an interlocutory injunction herein and ap-
pointing a receiver herein, and in requiring the said James Stillman
to pay into the custody of this court the money so received from the
said sale to the United States Government, and in treating said
moneys as a fund for distribution by this court.

Fourth. The court erred for the reasons stated in assignment
number two herein in overruling the pleas to the jurisdiction of this
court filed by defendants herein, and in holding that this court had

jurisdiction of this cause as an ancillary suit to said action of Salinas *vs.* Kellogg, *et al.*

Fifth. The court erred for the reasons given in said assignment number two in overruling the several pleas to the jurisdiction of this court filed by the defendants herein against the several interventions filed herein on the part of intervenors claiming an interest in the said moneys which the court had so directed should be paid into its custody.

Sixth. The court erred for the reasons set out in said assignment number two in rendering final judgment herein impounding said moneys and directing the distribution of same, and adjudicating the rights of complainants and divers intervenors herein to recover from the defendant, James Stillman, out of said moneys, the various sums adjudicated in the final decree rendered herein, as the court was without jurisdiction to hear and determine this cause, and without jurisdiction to impound said fund, and without jurisdiction to adjudicate the rights of any person thereto, and without jurisdic-
806 tion to distribute said fund, as is more fully shown in assignment of error number two, hereinabove set forth.

(Signed) DENMAN, FRANKLIN & McGOWN,
Attorneys for Defendant James Stillman.

(Endorsed:) No. 21 Eq. C. B. Combe, *et al. vs.* James Stillman, *et al.* Assignments of error. Filed Dec'r. 12, 1903. C. Dart, clerk.

807 *Appeal Bond.*

C. B. COMBE, Independent Executor of the Estate of Stephen Powers, Deceased, and C. B. Combe, Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph K. Combe, and Emile P. Combe, Complainants,

vs.

JAMES STILLMAN, THOMAS CARSON; THOMAS Carson, Administrator of the Estate of Maria Josefa Cavazos, Deceased; Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Mat Gerhard, J. L. Landrum, Juan Salinas, Francisco Yturria, Henry Miller, Charlotte Miller, Charles S. Dana, Maria Grogan Dana, Frances E. Landrum, Agnes Anastacia Brown, J. A. Brown, Lilian Mary Hicks, Administratrix of the Estate of Annette P. Hicks, Deceased; Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Mary B. Woodhouse, Independent Executrix of the Estate of H. E. Woodhouse, Deceased, Defendants; Pedro G. Cavazos, Miguel Garcia Cavazos, Francisca Garcia Cavazos de Treanor, Rafaela M. de Garcia Cavazos, Rafael G. M. Cavazos, Adelede G. M. Cavazos, Josephina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, Jose G. M. Cavazos, G. H. Giddings, S. J. Brooks, Receiver; C. L. Bates, W. N. Parks, Duval West, Intervenors.

No. 21. In Equity.

Whereas, in the above numbered and styled cause pending in the United States circuit court in and for the southern district of Texas, at a regular term of said court sitting at Brownsville, Texas, towit: on the 12th day of December, A. D. 1903, a judgment was rendered against James Stillman, wherein the court adjudged that the said James Stillman as trustee held a balance in his hands of $106,818.98,

808 which sum is to be distributed under the orders of the court and in accordance with the decree therein rendered and directed and commanded the said James Stillman to pay said sum of money at once into the court's repository, the South Texas National Bank of Houston, Texas, to the credit of said court, less the sum of $50,000 previously paid into said repository by said

James Stillman, under previous orders of said court; and also adjudging recovery in favor of S. J. Brooks, receiver, in said cause against James Stillman and Fidelity and Deposit Company of Maryland, sureties upon the bond theretofore filed in said cause by James Stillman, in accordance with the order of the court to secure the payment of the said fund for the sum of $56,818.98; and further adjudging that wher said sum of money had been paid into said court by James Stillman, trustee, in accordance with said decree, that the same shall be distributed by the clerk of the court drawing checks upon said fund, which checks were to be countersigned by the court in favor of the respective parties to whom the court had awarded said fund under said judgment, that is to say:

(1.) In favor of C. Dart, clerk of the court, for $3,942.00 costs.

(2.) In favor of S. J. Brooks, receiver, for the sum of $500.00.

(3.) In favor of C. L. Bates for 5,000.00.

(4.) In favor of W. N. Parks, for 5,000.00.

(5.) In favor of C. B. Combe, as independent executor of the estate of Stephen Powers, deceased, for the sum of 2,771.30 being 10.74/358 of the balance of said fund.

(6.) In favor of Mary B. Woodhouse, executrix of the estate of H. E. Woodhouse, deceased, in the sum of $1,385.65, being 9.52/358 of said balance of said fund.

(7.) In favor of James Stillman for the sum of $44,110.02, being one-half of the balance of said fund, unless the said James Stillman has retained said sum, then no check shall issue to him, but
809 the clerk shall file the voucher from James Stillman showing his payment in full.

(8.) It is further ordered, adjudged and decreed that of the sum of $44,110.01 awarded to the estate of Maria Josefa Cavazos, deceased, being the remainder of said fund, the clerk shall, by check, as aforesaid, pay to Du Val West the sum of $4,000.00 and the balance of said fund shall be retained by this court for distribution.

(1.) To the creditors whose claims may be allowed and established in this court, if any, and then;

(2.) The balance of said fund, after first paying the costs, incident to such intervention, shall be divided into three equal parts, one of which parts shall be paid to Miguel Garcia Cavazos, or his legal representative; the second of said parts shall be paid to Francisca Garcia Cavazos de Treanor, or her legal representatives; and the third of said parts, or that portion going to the estate of Pedro G. Cavazos, deceased, shall be paid one-third to Rafaela M. de Garcia, or her legal repsesentatives; and two-eighteenths each to Rafael G. M. Cavazos, Adelede G. M. Cavazos, Josefina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, and Jose G. M. Cavazos, or their legal representatives.

From which final judgment and the various interlocutory orders and decrees previously rendered by the said court herein, the defendant James Stillman did apply for and was granted an appeal to

the Supreme Court of the United States of America, solely upon the question of jurisdiction, on condition that he, the said James Stillman, should execute a bond in the sum of twenty-five thousand ($25,000.00) dollars, conditioned as provided by law: therefore,

Know all men by these presents, that James Stillman, as principal, and the Maryland Bonding Company of Baltimore, Maryland, as surety, do hereby acknowledge ourselves bound to pay to C. B. Combe, independent executor of the estate of Stephen Powers,
810 deceased, C. B. Combe, Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph K. Combe, and Emile P. Combe, Thomas Carson, administrator of the estate of Maria Josefa Cavazos, deceased, Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Mat Gerhard, J. L. Landrum, Juan Salinas, Francisco Yturria, Henry Miller, Charlotte Miller, Charles S. Dana, Marie Grogan Dana, Frances E. Landrum, Agnes Anastacia Brown, J. A. Brown, Lilian Mary Hicks, administratrix of the estate of Annette P. Hicks, deceased, Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Mary B. Woodhouse, independent executrix of the estate of H. E. Woodhouse, deceased, Pedro G. Cavazos, Miguel Garcia Cavazos, Francisca Garcia Cavazos de Treanor, Rafaela M. de Garcia Cavazos, Rafael G. M. Cavazos, Adelede G. M. Cavazos, Josefina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, Jose G. M. Cavazos, G. H. Giddings, S. J. Brooks, receiver, C. L. Bates, W. N. Parks, and Du Val West, the sum of twenty-five thousand dollars ($25,000) and to make payment thereof we firmly bind ourselves, our heirs, executors and administrators, conditioned that the said James Stillman shall prosecute his appeal to effect and shall answer all damages and costs adjudged against him if he shall faile to make his appeal good.

Witness our hands this, the 12th day of December, A. D. 1903.

JAMES STILLMAN,
By DENMAN, FRANKLIN & McGOWN,
Attorneys of Record.

[SEAL.] THE AMERICAN BONDING COMPANY OF BALTIMORE, MD.,
By FLOYD McGOWN, *Vice-President.*

Attest:

By T. W. CAMPBELL, *Secretary.*

Approved by me this 12th day of December, A. D. 1903.

W. T. BURNS, *Judge.*

811 (Endorsed:) No. 21 Eq. C. B. Combe, *et al. vs.* James Stillman, *et al.* Appeal bond Filed December 12th, 1903. C. Dart, clerk.

812 *Order Allowing Appeal.*

C. B. COMBE, Independent Executor of the Estate of Stephen Powers, Deceased, and C. B. Combe, Charles B. Combe, Jr., Frederick J. Combe, Frank B. Combe, Joseph K. Combe, and Emile P. Combe, Complainants,

vs.

JAMES STILLMAN, THOMAS CARSON; THOMAS Carson, Administrator of the Estate of Maria Josefa Cavazos, Deceased; Leocardio Salinas, Antonio Salinas, Melchor Salinas, Bernardo Salinas, Higinio Salinas, Alejandro Salinas, Jose Maria Salinas, Vicente Salinas, Mat Gerhard, J. L. Landrum, Juan Salinas, Francisco Yturria, Henry Miller, Charlotte Miller, Charles S. Dana, Marie Grogan Dana, Frances E. Landrum, Agnes Anastacia Browne, J. A. Browne, Lilian Mary Hicks, Administratrix of the Estate of Annette P. Hicks, Deceased; Felicita Salinas, Andrea Salinas, R. D. Hinojosa, Mary B. Woodhouse, Independent Executrix of the Estate of H. E. Woodhouse, Deceased, Defendants; Pedro G. Cavazos, Miguel Garcia Cavazos, Francisca Garcia Cavazos de Treanor, Rafaela M. de Garcia Cavazos, Rafael G. M. Cavazos, Adelede G. M. Cavazos, Josephina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, Jose G. M. Cavazos, G. H. Giddings, S. J. Brooks, Receiver; C. L. Bates, W. N. Parks, Duval West, Intervenors.

No. 21. In Equity.

Upon consideration of the petition of James Stillman for appeal to the Supreme Court of the United States, filed herein at the present term of this court, during the session hereof, it is ordered that said appeal be, and it is hereby, granted as prayed for, petitioner to file a bond herein in the penal sum of twenty-five thousand dollars, to be approved by the court. It is further ordered that this appeal shall suspend the execution of the judgment of this court from which this appeal is allowed. This appeal is granted, however, solely upon the question of jurisdiction, as set forth in the said petition for appeal, and the court certifies that there is no controversy between citizens of different States and no diversity of citizenship herein between complainant and defendants conferring jurisdiction upon this court,

and that jurisdiction in this court over this cause is entertained solely upon the ground asserted by the complainant that his bill of complaint in this suit is ancillary to the action at law styled
813 Heirs of Miguel Salinas *vs.* William L. Kellogg, *et al.*, No. 248 on the law docket of this court, and to the judgment rendered in said action, all referred to and set forth in the said petition for appeal herein; and the court further certifies that it held and maintained jurisdiction in this cause solely upon the ground that complainant's bill of complaint and this suit were ancillary to the said action at law styled Heirs of Miguel Salinas *vs.* William L. Kellogg, *et al.*, No. 248, and to the judgment rendered therein, and further certifies that said judgment in said action was rendered in this court, on the 14th day of July, 1887, and was the final judgment in said action at law. And inasmuch as this appeal is granted solely upon the question of jurisdiction, it is further ordered that the record to be made herein shall consist solely of the pleadings of the complainants and defendants filed herein, including the exhibits attached thereto, and all the orders and decrees entered by this court during the progress of this cause, including the final judgment entered herein, and all the process or processes served upon the defendants herein, together with the application and orders granting same and the returns thereon, and of so much of the evidence taken herein as shows the fact that the agreement of arbitration set forth or referred to in the original bill of complaint filed herein was not filed in the action of the said Heirs of Miguel Salinas *vs.* William L. Kellogg, *et al.*, No. 248, nor called to the attention of the judge trying said cause, nor to the attention of the United States district attorney representing the said William L. Kellogg as an officer of the United States Army in said cause. And the court does further certify that it has no jurisdiction over or as to the interventions filed herein unless the original bill is properly filed herein and the suit is ancillary to the action at law styled Heirs of Miguel Salinas *vs.* William L. Kellogg, *et al.*, above referred to, hence it is ordered that all pleadings or evidence touching said interventions shall be omitted from this record herein.

The clerk shall insert the following in this record:

814 Caption.

Original bill, with Exhibits thereto A, B, C, D, E, F and G.
Subpœna for Thomas Carson, administrator.
Subpœna for James Stillman.
Alias subpœna for James Stillman.
Petition for substituted service on Mott, *et al.*
Order for service.
Request for subpœna for Carson.
Two orders for subpœnas for Carson and Stillman.
Affidavit of W. N. Parks.
Affidavit of C. L. Bates.
Motion to require defendants to pay money into court.
Carson's reply to motion.

Petition for certified records.
Order for certified records.
Motion to require Stillman to file agreement.
Order appointing receiver.
Writ of injunction.
Writ of injunction.
Writ to serve copy of order appointing receiver on Carson.
Bond of Brooks, receiver.
Writ of injunction on Stillman.
Writ to serve copy of receiver's appointment.
Limited appearance of Stillman.
Plea of Stillman to jurisdiction.
Plea of Carson to jurisdiction.
Order to show cause for violation of writ.
Information against Stillman.
Order setting down for hearing plea to jurisdiction.
Writ to serve order on Carson for appearance.
Writ to serve order on Carson for appearance.
Writ to serve order on Stillman for appearance.
Answer of Carson to rule to show cause.
815 Exhibits to answer.
Answer of Stillman to rule to show cause.
Order overruling plea to jurisdiction.
Assignments of error.
Agreement as to filing assignments of error.
Appeal bond.
Citation.
Clerk's certificate.
Motion to execute mandate.
Mandate.
Opinion of U. S. court of appeals in this cause.
Application for order to serve Miller.
Petition for process.
Order directing process.
Subpœna for Dana.
Subpœna for Mrs. Dana.
Subpœna for Dana.
Subpœna for Dana.
First amended bill.
First amended pleas of Stillman and Carson.
Motion to require payment of fund into court.
Demurrer of Carson.
Demurrer of Stillman.
Answer of Carson to rule.
Answer of Stillman to rule.
Second amended answer of Stillman.
Second amended answer of Carson.
Second amended bill.
Separate demurrer of Stillman to second amended bill.

Demurrer and exceptions of Carson to amended bill.
Order directing payment of fund into court.
Stillman's bond to receiver.
Order on demurrer to second amended bill.
816 Alias subpœna for Dana.
Alias subpœna for Mrs Dana.
Subpœna for Miller.
Subpœna for Yturria.
Subpœna for Hicks.
Subpœna for Salinas.
Subpœna for Mrs. Browne.
Exceptions of Carson to bill.
Exceptions of Stillman to bill.
Application for substituted service on Henry Miller.
Order directing same.
Subpœna for Henry Miller.
Answer of Mary B. Woodhouse.
Answer of Stillman to second*ed* amended bill.
Answer of Carson to second amended bill.
Subpœna for Mary B. Woodhouse.
Subpœna for Mary B. Woodhouse.
Subpœna for Lilian Mary Hicks.
Subpœna for Frances Landrum.
Order reviving bill against Mary B. Woodhouse.
Replications to answers of Stillman and Carson.
Order setting down demurrers for argument.
Order overruling demurrers.
Order setting cause down for hearing.
Order of court taking cause under advisement.
Order directing papers to be sent to San Antonio.
Interlocutory decree at Houston.
Order granting re-hearing.
Final decree.

Evidence.

Certified transcript of the record in cause No. 248, law docket, styled Heirs of Miguel Salinas *vs.* William L. Kellogg and others.

(NOTE.—In making up the transcript the clerk will omit under the head of "Evidence" such of the papers in cause No. 248 as have been previously copied in the record as exhibits to pleadings
817 of either complainants or defendants, referring to the place where each instrument should be inserted under the head of evidence, to the exhibit setting the same out.)

Plaintiff's petition.	No. 248
Citation for William L. Kellogg.	" 248
Petition of H. E. Woodhouse for intervention.	" 248
Order of continuance.	" 248

Petition for removal to U. S. circuit court. No. 248
Bond for removal. " 248
Judgment removing cause. " 248
Clerk's certificate of the record. " 248
Original answer of Kellogg. " 248
Original answer of United States. " 248
Motion of United States attorney to make parties. " 248
Order granting leave. " 248
Order granting Woodhouse leave to amend. " 248
Original answer of Stillman. " 248
Answer of Hinojosa. " 248
Answer of Powers. " 248
Answer of Gerhardt. " 248
Answer of Cavazos. " 248
Answer of Carson. " 248
Answer of Miller. " 248
Amended original petition. " 248
Notice of filing papers. " 248
Application for order to serve absent defendants. " 248
Waiver of service and appearance of Stillman. " 248
Agreement as to property. " 248
Verdict of jury. " 248
Judgment. " 248
Order of probate court, August term, 1885, authorizing Thomas Carson, as administrator of Maria Josefa Cavazos to settle Fort Brown claim. " 248
Deed, March 3, 1875, Maria Josefa Cavazos to Charles Stillman. " 248
Deed, Isabella Stillman and others to James Stillman. " 248

818 Agreement between Stillman and others, dated July 13, 1887 (Exhibit D to plaintiff's original bill, which exhibit see for copy in full).

Exemplified copies of records from the War Department showing collection of fund and payment to Stillman (Exhibits E and C to plaintiff's bill).

Correspondence of Attorney-General.

Correspondence of Secretary of War.

Will and codicil of Stephen Powers, deceased (set out in full as Exhibits A and B to plaintiff's original bill).

Testimony of J. R. Cox.

Testimony of Thomas Carson.

Petition for appeal.

Assignment of errors.

Bond on appeal.

Decree allowing appeal.

Cost bill.

Clerk's certificate.

And the said James Stillman having filed herein his appeal bond in the penal sum of $25,000.00, as fixed by the court in this order, and which said bond has been duly examined by the court, it is further ordered that said bond be and the same is approved by the court.

Done in open court at Brownsville, Texas this the 12th day of December, A. D. 1903.

(Signed) W. T. BURNS,
U. S. District Judge.

(Endorsed:) No. 21 Eq. C. B. Combe, *et al. vs.* James Stillman, *et al.* Order allowing appeal. Filed December 12th, 1903. C. Dart, clerk.

819

Cost Bill.

U. S. Circuit Court, Southern District of Texas.

C. B. COMBE, Executor, ET AL. *v.* JAS. STILLMAN ET AL. } No. 21. Equity.

Costs of clerk and marshal incurred in western district Texas, per bill taxed by D. H. Hart, clerk	$890.53
Clerk's and marshal's costs, southern district, account complainants	70.57
Clerk's costs incurred in southern district by heirs Pedro Cavazos	8.30
Def'ts Stillman and Carson	25.62
Intervenor Giddings	.45
Intervenor Josefa Martinez, *et al*	1.50
Intervenor Mother St. Agnes, *et al*	1.25
Clerk's costs at Houston on hearing and filing and copies at Galveston, estimated	15.00
Clerk's commissions on $49,500 deposited	495.00
" " " 76,889.98 to be deposited	768.89
Estimated clerk's costs to close case, not including transcript on appeal	100.00

Stenographers' fees taking depositions before Creager:

Plaintiff	64.00
Defendant	46.20
Fee for taking deposition Geo. H. Giddings	7.00
" " " J. J. Cocke	25.00
" " " Sam'l Belden	5.00
" " " Jas. Stillman, *et al*	5.00

Fees of Creager, examiner, taking depositions:

Paid by Carson	$25.00	
" " Combe	40.00	
		65.00
Am't carried over		$2594.31

820 Am't bro't forward $2594.31
Attorneys' docket fee 20.00
Att'ys' fees—compl'ts' att'ys—on dep't'ns—6 @ $2.50 ..... 15.00
Fees of Jno. B. Marshall, stenographer, paid by McGown, Dec'r term, 1903 ..... 37.50
Fees of H. A. McKay, stenographer, fees at Houston paid by McGown 9.30

P't'ffs' expenses per bill:

Recording will of S. Powers	$3.12	
Release from Stillman & Carson	1.17	
Oaths of executors of Powers	1.30	
Deed from Stillman and C. to U. S.	1.70	
Copy petition and abstract, Powers est	14.00	
E. Dwyer, fees taking testimony	70.00	
Marshall, stenographer, taking testimony, San Antonio	20.00	
Copy of field notes, Espiritu Santo	13.50	
Copy petition and agreement	5.50	
Copies of papers paid Kowalski, cl'k dist. ct	30.00	
		160.29
Bill of James Stillman and Thomas Carson, not final, may be subject to reduction		1105.60
		$3942.00

Endorsed: Eq. 21. C. B. Combe, executor *et al.*, *vs.* James Stillman *et al.* Cost bill. Filed Dec'r 12, 1903. C. Dart, clerk.

821 *Order of Court Granting Leave to Rafaela M. de Cavazos et al. to Intervene.*

C. B. COMBE, Executor, ET AL.
vs.
JAMES STILLMAN ET AL. } No. 21. In Equity.

Cause pending in the United States circuit court, western district of Texas, Brownsville division.

Upon considering the petition filed by Rafaela M. de Garcia Cavazos, and her children, praying leave to intervene in this cause, together with the briefs and argument of counsel, and it appearing to the court:

(1.) That the court has jurisdiction of the cause, Carson *vs.* Combe, 86 Fed. Rep. 202;

(2.) That the fund now in the custody of the court was brought within the State and within the control and jurisdiction of the court by its own process, and therefore this court has exclusive jurisdiction to administer the fund, upon the principal that "when property is in the actual possession of one court of competent jurisdiction, such possession cannot be disturbed by process out of another court." (Byers *v.* McAuley, 149 U. S. 614.) And the jurisdiction being ancillary, the "possession of the *res* draws to the court having possession, all controversies concerning the *res*." *Ibid.* p. 619. See also, Hayes *v.* Pratt, 147 U. S. 570; Lawrence *v.* Nelson, 143 U. S. 215; Hess *v.* Reynolds, 113 U. S. 73; Rio Grande Railroad Co. *v.* Gomilla, 132 U. S. 478; Green *v.* Creighton, 23 Howe, 90; Freeman *v.* Howe, 24 How. 450. See also Chambers *v.* Cannon, 62 Texas, 293; Eckford *v.* Knox, 67 Texas, 205; Patton *v.* Gregory, 21 Texas, 513.

(3.) That the parties applying to intervene have a substantial interest in the fund to be administered, and, in view of the facts appearing of record, are proper parties to the litigation, it is therefore ordered, that the petitioners, Rafaela M. de Garcia Cavazos, and her children have leave, and leave is hereby granted to them, to
822 intervene in this suit for their own interests, and to that end, to appear in the suit by their solicitor within fifteen days, as defendants, in the same manner and with like effect as if they were named in the complainants' pleading filed in the cause as defendants having or claiming an interest. This order to be without prejudice to proceedings already had To this order the defendants Stillman and Carson, as administrator and individually, except.

The clerk will duly enter this order of record at the Brownsville division of the court.

Ordered at Austin, Texas, January 30, A. D. 1902.

T. S. MAXEY,
United States Judge.

Endorsed: No. 21. Equity. C. B. Combe, executor, *et al.*, *vs.* James Stillman, *et al.* Order of court granting leave to Rafaela M. de Cavazos, *et al.* to intervene. Filed January 30, 1902. D. H. Hart, clerk. Entered at Brownsville, Feb'y 5, A. D. 1902.

823 *Order Modifying Former Order Allowing Intervention, and Also Striking Answer of Intervenor from the Files, and Allowing Time to Answer Petition of Intervention.*

United States Circuit Court, Western District of Texas, Brownsville Division.

C. B. COMBE, EX'R, ET AL.
vs.
JAS. STILLMAN ET AL. } No. 21. In Equity.

Be it remembered that at chambers in the city of San Antonio came on to be heard, in the above stated cause, the motions of plaintiffs to modify the orders of the court heretofore made allowing Rafaela M. de Garza Cavazos, *et al.* to intervene in this cause, and also to strike from the files the answers of said intervenors filed herein, both motions being submitted and heard together.

And the court having heard argument of counsel and being advised of all matters arising thereon, doth sustain the same; and said answer of the intervenors is hereby stricken from the files and they allowed to intervene to protect their interests herein and have notice of the proceedings herein.

It is further ordered that the amended petition of intervention heretofore filed by the intervenors shall be taken and shall stand as the pleading of said intervenors herein, and that any of the parties to this suit may answer said amended petition on or before May 15, 1902, as they shall be advised.

It is further ordered that this order be duly entered on the order book in the Brownsville division. Ordered at San Antonio Texas, April 1, 1902.

To which said defendants Thomas Carson, adm'r, and James Stillman, excepted.

T. S. MAXEY, *Judge.*

824 Endorsed: No. 21 Equity. In the circuit court of the United States in and for the western district of Texas, at Brownsville. C. B. Combe, ex'r, *et al. vs.* James Stillman, *et al.* Order modifying former order allowing intervention, and also striking answer of intervenors from the files, and allowing time to answer petition of intervention. Filed this 1st day of April, 1902. D. H. Hart, clerk, by Benj. Kowalski, deputy.

825 In the Circuit Court of the United States for the Southern District of Texas, at Brownsville.

I, C. Dart, clerk of the circuit court of the United States, for the southern district of Texas, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the record and of the assignment of errors, and of all proceedings in the case in cause No. 21, on the equity docket of said court, entitled C. B. Combe, executor *et al. vs.* James Stillman *et al.* as the same now appears on file and of record in my office.

To certify which witness my hand and the seal of said court at Brownsville in the said district this the 2nd day of January A. D. 1903.

[Seal United States Circuit Court, Southern District of Texas.]

C. DART,
Clerk U. S. Circuit Court, Southern District of Texas,
By R. B. CREAGER, *Deputy.*

Endorsed on cover: File No. 19,201. S. Texas, C. C. U. S. Term No. 174 James Stillman, appellant, *vs.* C. B. Combe, independent executor of the estate of Stephen Powers, deceased, C. B. Combe, *et al.* Filed January 16", 1904. File No. 19,201.

FILE COPY.

Office Supreme Court U. S.
FILED
MAR 8 1905
JAMES H. McKENNEY,
Clerk.

No. 174.

IN THE

Supreme Court of the United States.

JAMES STILLMAN,
Appellant,
against
C. B. COMBE, Executor of the Estate of Stephen Power, deceased, ET AL.,
Appellees.

BRIEF FOR APPELLANT.

JOHN A. GARVER,
JAMES M. BECK,
Counsel for Appellant,
44 WALL STREET,
New York City.

C. G. BURGOYNE, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 174.

JAMES STILLMAN,
Appellant,

AGAINST

C. B. COMBE, Executor of the Estate of Stephen Power, deceased, *et al.*,
Appellees.

Brief for Appellant.

Statement.

This is an appeal from a final decree rendered by the United States Circuit Court for the Southern District of Texas.

The appeal was allowed and certified by that Court directly to this Court upon the sole question of its jurisdiction (p. 561). The appeal also brings up for review various interlocutory orders and decrees (pp. 554, 561).

Jurisdiction was entertained by the Circuit Court solely upon the ground that the suit was ancillary to *an action at law* in the same Court, in which final judgment had been rendered in July, 1887 (p. 562),

ten years before the commencement of the present suit (p. 18).

The present suit was brought by a citizen of Texas, to compel the appellant Stillman, a citizen and resident of New York, and Thomas Carson, a citizen of Texas, as Administrator of the Estate of Maria Josefa Cavazos, to pay into the Court and account for a fund of $160,000, which was held by the appellant in New York (pp. 237, 354). The complainant claimed to be entitled to one-half of this fund (p. 17). Various other persons, citizens of Texas and elsewhere, were made parties to the suit. By the final decree, there was awarded to the complainant, for his entire interest in the fund, the sum of $2,771.30 (p. 414). The remainder of the fund, with the exception of $1,385.65, after allowing for various costs and expenses, was directed to be divided equally between Mr. Stillman, the appellant, and the next of kin of Maria Josefa Cavazos, of whose estate Mr. Carson was the Administrator (pp. 413–414).

Both Mr. Stillman and Mr. Carson, at every stage of the litigation, denied the right of the court to compel the payment of any sum of money into its registry, and to distribute the amount so paid, on the ground that the court was without jurisdiction.

The bill of complaint shows that the sum in question represented the amount paid, in 1895, by the United States to Stillman and to Carson, as Administrator, for the Fort Brown Military Reservation, at Brownsville, Texas (p. 13). That property had been occupied by the United States, as a military post, ever since the commencement of the Mexican War (pp. 3–4). In 1885, Congress appropriated $160,000 to pay for the property and for its use and occupation, and enacted that no part of this sum should be paid until a complete title had been vested in the United States; and it further required the full price to be paid directly to the owners (p. 5). In 1886, Leocadio Salinas and others, the heirs of Miguel Salinas, claiming to be entitled to the property, commenced an action in eject-

ment in the District Court of Cameron County, Texas, against Colonel Kellogg, an officer in command at Fort Brown, to recover its possession. The action was removed into the United States Circuit Court, where it was entered upon the *law docket*, as Number 248 (pp. 5–6). Thereafter, various other parties, including the heirs and legal representatives of Maria Josefa Cavazos, deceased, were made parties defendant and filed answers in reconvention, as permitted by the Texas practice, setting up their claims of title (p. 6). The action was brought to trial in July, 1887, and a verdict rendered by the jury, in favor of Stillman and of Carson, as Administrator, finding that the title was vested in them, in equal moieties (p. 10). Final judgment was entered accordingly (pp. 11–12).

In 1895, about eight years after the entry of that judgment, Stillman and Carson, as Administrator, conveyed the property to the United States, which paid for it $160,000, the amount of the said appropriation (p. 13). It is the said action at law, of Salinas v. Kellogg, and the judgment entered in it, whose finality and validity have never been questioned by any one, to which the present suit was held by the Court below to be ancillary ; and it was upon that ground alone, that jurisdiction of the cause was entertained (p. 562).

In the Court below, the complainants did not attack the validity of the judgment in Salinas v. Kellogg, and did not ask the aid of the Court to enforce the judgment or to obtain any relief of any kind under the judgment. The sole ground for claiming that the present suit was ancillary to the action at law, was that the verdict had been rendered and the judgment entered without any actual litigation of the claims of the various parties to the property, and pursuant to a written agreement, known as an arbitration agreement, by which a judgment was to be permitted in favor of Stillman and of Carson, as Administrator, who were thereafter to convey the property to the United States, collect the appropriation and pay it over, less $20,000 allowed for expenses, to a Texas bank, to the credit of

three arbitrators named, who were then to proceed to determine the conflicting claims and distribute the remainder of the fund accordingly (pp. 9–10, 26).

This arbitration agreement was not executed by all of the parties to the action (pp. 26–29, 415, 455–456), and it expressly purports to have been entered into "between and among *certain reconvening defendants*" (p. 26); it was not filed in the action and made part of the record, and was not brought to the attention of the Court or of the United States (pp. 496, 562), and some evidence was given on the trial (pp. 473, 494, 496).

The complainant below contended that the mere fact that Stillman and Carson, as administrator, had, prior to the entry of the judgment, agreed with some of the parties to the action at law to make a certain disposition of the proceeds of the Fort Brown property when received, and failed to do so, therefore, they could invoke the aid of the Court, on its equitable side, not to set aside or modify the judgment, and not even to compel specific performance of the arbitration agreement, but, in utter disregard of that agreement to compel the payment of the entire amount into Court, without even deducting the $20,000 allowed by the agreement for expenses, and then proceed to distribute it; and this too, although the fund was at the time of the commencement of this suit held by Mr. Stillman in New York (pp. 237, 549, 550); no part of it, as the Court below expressly adjudged, ever having come into the possession of Carson (p. 354). In other words, the claim was advanced and sustained by the Court below, that the mere breach of an arbitration agreement, entered into in an action at law, where the judgment is not complained of, gave a court of equity power to summon the parties to that agreement before it, although they resided in another State, and compel them not to arbitrate as they had agreed to do, but to litigate the issues that had been finally determined by the judgment in the previous action. This was done, too, in spite of the fact that it affirmatively appeared

from the bill of complaint (p. 14) that one of the three arbitrators had died and another had refused to act, and that Mr. Stillman and Mr. Carson had no power to appoint their successors (p. 28). This fact was also shown upon the trial, as well as the fact that some of the parties to the arbitration agreement had previously repudiated it (p. 497). Thus, not even a breach of the arbitration agreement by Stillman and Carson was shown. Neither was it claimed that Mr. Stillman was insolvent or unable to respond in an action at law for the breach of the contract.

Soon after the bill in this case was filed, the complainant made a motion for the appointment of a receiver of the fund, and to compel the defendant Stillman, who held the fund in New York (p. 237), to pay it into the registry of the Court (p. 54), and for an injunction as prayed for in the bill. Mr. Stillman had not then appeared, nor had service of the subpœna been made upon him even in New York. Mr. Carson, as Administrator, appeared, and opposed the motion, on the ground that the Court did not have jurisdiction of the suit and that he never had possession of the fund (pp. 55–59).

The motion was granted, a receiver of the fund was appointed and Stillman and Carson were nominally enjoined from using the judgment to deprive the complainant and others of their interest in the fund, and from refusing to pay the fund into Court, and account for the same (pp. 62–63). This injunction was an evident nullity, in so far as it attempted to enjoin the defendants from using the judgment for any purpose, as that was something which they could not possibly do, because of the fact that they had previously conveyed the property to the United States, and the judgment had become *functus officio*. The injunction was also an obvious absurdity, in so far as it attempted to restrain the defendants from not paying the fund to the Receiver or from not accounting. However, the form of the order was sufficient to enable an appeal to be taken to the Circuit Court of Appeals, where the order was af-

firmed (p. 136). While that Court recognized that the question of jurisdiction was "of paramount concern," it refused to pass upon it, deeming it "of such gravity and vital character that, in our opinion, the appeal from the interlocutory judgment should not be suffered to become the vehicle of bringing it up for premature determination" (p. 145); and the Court concluded that the question of jurisdiction should be left until after the final decree, when it might be carried directly to this Court (p. 146).

How roundabout and costly that method has been appears in part from the present record. The decision of the Circuit Court of Appeals was rendered in March, 1898 (p. 136), and the final decree was not entered until December, 1903, p. 43), nearly six years later. By that decree, the Court found that Stillman and Carson, in collecting the fund from the Government, had properly expended $53,818.02, including $8,101.02 paid on the property for taxes, leaving a balance of only $106,818.98 for distribution (p. 413). Out of this sum, $3,942 were allowed to the clerk of the court for costs, $500 to the Receiver, $2,771.30 to the complainant, $10,000 to the complainant's counsel, and the remainder, with the exception of $1,385.65, to Mr. Stillman and the Cavazos estate (p. 414). In other words, as a result of this prolonged litigation, the claimants of the appropriation, other than Stillman and the Cavazos estate, received $4,466.95, of which the complainant, who had claimed one-half of the entire appropriation was awarded only $2,771.30. That the cost of this litigation must have been enormous is obvious, partly from the bulk of the present record, but chiefly from what has been omitted; the huge volume of evidence in relation to the title having been omitted by the direction of the Court below, which certified only such portions of the record as bore upon the question of jurisdiction (p. 562).

Subsequent to the decision of the United States Circuit Court of Appeals, the defendant Stillman appeared

in the suit, solely for the purpose of testing the jurisdiction of the Court, and filed a plea to the jurisdiction (pp. 71–75). A similar plea was filed by the defendant Carson, as Administrator (pp. 75–79). Both pleas were overruled (p. 126).

Subsequently, a motion was made to compel the defendants Stillman and Carson, as Administrator, to pay the sum of $160,000 to the Receiver (p. 220). In his answer to that application, Carson showed that no part of the fund had ever come into his possession (p. 225). The defendant Stillman, protesting against the jurisdiction of the Court, admitted that the entire fund had been received by him and was held by him in New York, and claimed credit for certain expenditures made by him (pp. 229–238). The application was denied as to Carson, on the ground that he had never had possession or custody of the fund; but it was granted as to Stillman, although he was allowed a credit of $33,111.02 (pp. 354, 355); and, thereafter, the entire remainder of the appropriation was paid into court or secured in the manner directed (pp. 356–403), although, as has been heretofore stated, the complainant claimed only one-half of the appropriation. Pleas in abatement and demurrers to the original and amended bills were overruled. Thereupon, still protesting against the jurisdiction of the Court, the defendant Stillman answered the original, amended and second amended bills (pp. 242, 377). Issue was duly joined; and the case was heard and determined on its merits, with the result heretofore stated.

The final decree shows that the defendant Stillman protested against the jurisdiction of the Court throughout the litigation (p. 409).

There is as little restraint shown in the liberal provisions of the final decree (such as allowing to the complainant's counsel nearly four times the amount awarded to the complainant himself) as is shown in the amended and supplemental bills of complaint, which furnish a striking example of the "hybrid

system of pleading," which still crops up occasionally in Texas, in spite of the caustic criticism of this Court.

Randon v. Toby, 11 How., 493, 517.
Green v. Custard, 23 How., 484, 486.

Specification of Error.

The Court below erred in holding that it had jurisdiction of the cause (pp. 554–557).

POINTS.

FIRST.

The sole ground upon which jurisdiction was entertained.

The certificate of the Court below shows that the sole ground of jurisdiction relied upon was that the suit was ancillary to the action at law (p. 562). There was no diversity of citizenship, no fund in the custody of the Court and the case did not involve the construction of the Constitution or of any Federal Statute.

SECOND.

Jurisdiction must be clear and appear affirmatively.

The United States Circuit Court, being a court of statutory and limited jurisdiction, the presumption at every stage of a cause in that Court is that the Court

is without jurisdiction, unless the contrary affirmatively appears from the record.

Turner v. Bank of N. A., 4 Dall., 8.
Bors v. Preston, 111 U. S., 252.
Mansfield, etc., R. Co. v. Swan, 111 U. S., 379, 383.
Lehigh, etc., Co. v. Kelly, 160 U. S., 327, 337.

THIRD.

Appellant's right to raise question of jurisdiction.

I. The appellant has not waived his right to object to the jurisdiction, by having served an answer after his plea to the jurisdiction under a limited appearance had been overruled.

Harkness v. Hyde, 98 U. S., 476.
So. Pac. Co. v. Denton, 146 U. S., 202.
Mexican R. Co. v. Pinkney, 149 U. S., 194.

II. The appellee's contention, that the affirmance by the Circuit Court of Appeals of the interlocutory order appointing a receiver and enjoining the defendants from using the former judgment to the injury of the complainant, precludes the present appeal from the final decree, is so fanciful as to require no serious comment. Mr. Stillman, the present appellant, was not even a party to the appeal to the Circuit Court of Appeals.

FOURTH.

Ancillary.

Ancillary is that which is auxiliary or subordinate to something else, serving as an aid, adjunct or accessory to it. A thing cannot be ancillary to another, unless it in some manner tends to supplement or complete the other. If a thing is complete in itself, nothing can be ancillary to it.

The most frequent application of the term in the law is in connection with the administration of estates and in the appointment of ancillary executors, administrators, guardians or receivers, where the ancillary administration is supplemental to the principal administration, without which the estate could not be completely administered.

FIFTH.

Ancilliary Jurisdiction.

A suit is ancillary when it is supplemental to a previous action or suit and so connected with it as to form an incident to it and substantially a continuation of it.

Barrow v. Hunton, 99 U. S., 80, 82.
Marshall v. Holmes, 141 U. S., 589, 597.
Raphael v. Trask, 194 U. S., 272, 278.

The cases in which suits have been held to be ancillary fall into two general classes:

I. Where the Court has possession of a fund derived from the previous litigation.

II. Where the Court is asked to take some action with reference to a previous judgment or decree rendered by it or with reference to an action at law still pending and undetermined.

I. In the following cases, the Court was in control of the fund at the time of the commencement of the ancillary suit:

Freeman v. Howe, 24 How., 450.
Minnesota Co. v. St. Paul Co., 2 Wall, 609.
Bank v. Calhoun, 102 U. S., 256.
Krippendorf v. Hyde, 110 U. S., 276.
Gumble v. Pitken, 124 U. S., 131.
Morgan's Co. v. Texas Central Railroad, 137 U. S., 171.
Re Tyler, 149 U. S., 164.
White v. Ewing, 159 U. S., 36.
Boggs v. Martin, 179 U. S., 206.
Julian v. Central Trust Co., 193 U. S., 93, 113.
McBee v. Marietta Railroad, 48 Fed., 243.
Compton v. Jessup, 62 Fed., 263.
N. Y. Commercial Co. v. Francis, 83 Fed., 769.
Widaman v. Hubbard, 88 Fed., 806.
Davis v. Martin, 113 Fed., 6, 9.
Memphis Bk. v. Houchens, 115 Fed., 96, 110, 111.
In re Sabin, Fed. Case No. 12,195.

II. The second class of cases, where ancillary bills have been entertained, is where the Court is asked to take some action with reference to a previous judgment or decree rendered by it or with reference to an action still pending and undetermined. There are two different kinds of applications which can be made under this class.

1. To assist in carrying the previous judgment or decree into effect.

2. To correct or modify the previous judgment or decree, or to vacate it on the ground of fraud or mistake, or to enjoin its enforcement, or to enjoin the prosecution of a pending action at law.

1. Where the previous action was one at law, the method of enforcing the final judgment in it is by a common law writ. In an action of debt or assumpsit or conversion, the writ is an execution. In an action of ejectment, it is a writ of possession.

A court of equity lends its assistance for the purpose of enforcing a previous judgment in an action at law only where the common law writ is ineffective, as, for instance, where property belonging to the judgment debtor and properly applicable to the satisfaction of the judgment, is held for his benefit by another or has been fraudulently disposed of by him.

Babcock v. Millard, Fed. Case No. 699.
Hatch v. Dorr, 4 McLean, 112, Fed. Cas., 6206.
Bank v. Turnbull, 16 Wall., 190.
New Orleans v. Fisher, 180 U. S., 185.

The cases in this subdivision, in which a court of equity is most frequently appealed to, are those where some additional action is essential to make the previous decree of the court in a suit in equity effective. Such cases are the directing of a supplemental account, compelling the performance of some affirmative act or the observance of the terms of the previous decree, etc.

Railroad Co. v. Chamberlain, 6 Wall., 748.
Root v. Woolworth, 150 U. S., 401.

2. Suits brought to correct, modify or vacate judgments or decrees or to enjoin their enforcement or to enjoin the prosecution of a pending action at law.

Every Court of general jurisdiction has complete control over its own proceedings and over its judgments and decrees, during the term at which they are rendered; and at any time before the end of the term, it may set aside or amend them in any manner deemed advisable.

Henderson v. Carbondale, 140 U. S., 25, 40.

But it has no power to do this, upon petition, after the expiration of the term.

Bronson v. Schulten, 104 U. S., 410.
Central Trust Co. v. Grant Locomotive Works, 135 U. S., 207;

although, in some States, this power has been extended by statute beyond the term at which the proceedings were held (New York Code Civil Procedure, Sec. 1282).

But where, owing to the expiration of the term, the Court has no power to grant relief upon petition, it will do so upon suit brought for the purpose; and such suit is regarded as dependent or ancillary. The most familiar examples of this class are stockholders' bills to vacate foreclosure decrees against corporations on the ground of collusion, and bills to enjoin the enforcement of judgments or decrees so as to permit a defendant to interpose a defense or counterclaim which was not provable in the original action.

Dunn v. Clarke, 8 Pet., 1.
Pennock v. Coe, 23 How., 117.
Jones v. Andrews, 10 Wall., 327.
Dewey v. Gas. Co., 123 U. S., 329.
Johnson v. Christian, 125 U. S., 642.
Pacific Railroad v. Missouri Railroad, 111 U. S., 505.
Carey v. Houston, etc., R. R. Co., 161 U. S., 115.
Cortes Co. v. Thannhauser, 9 Fed., 226.
Symmes v. Union Trust Co., 60 Fed., 830, 853.
M'Donald v. Seligman, 81 Fed., 753.
Brown v. Walker, 84 Fed., 532.
Broadis v. Broadis, 86 Fed., 951.
Richardson v. Loree, 94 Fed., 375.
Bank of Leland, Fed. Case No. 9452.
Dunlap v. Stetson, 4 Mason, 346; Fed. Case No. 4164.
Thompson v. McReynolds, 29 Fed., 657.

SIXTH.

Authorities relied upon by the appellees.

There is not a single authority relied upon by the appellees, which affords the slightest ground for the

maintenance of the present suit. Every one of the cases cited falls under one of the classes specified in the preceding Fifth Point, with the exception of Clark v. Mathewson (12 Pet., 164), which merely holds that where a plaintiff dies, his administrator may revive the action, even though he is a citizen of the same State as the defendant.

In the following cases, cited by the appellees, the suit was in relation to a fund which was in the possession of the Court.

In re Sabin, Fed. Case No. 12,195.
Freeman v. Howe, 24 How., 450.
Minnesota Co. v. St. Paul Co., (cited as Milwaukee Co. v. Soutter), 2 Wall., 609.
Krippendorf v. Hyde, 110 U. S., 276.
Pacific Railroad v. Missouri Railroad, 111 U. S., 505.
Gumble v. Pitken, 124 U. S., 131.
White v. Ewing, 159 U. S., 36.
Compton v. Jessup, 62 Fed., 263.
Blake v. Iron & Coal Co., 76 Fed., 624.
Dietzsch v. Haidekopel, 103 Fed., 494.

The following cases were brought to enforce a previous decree or were in aid of an execution.

Bank v. Turnbull, 16 Wall., 190.
Root v. Woolworth, 150 U. S., 401.
New Orleans v. Fisher, 180 U. S., 185.
Lamb v. Ewing, 54 Fed. Rep., 269.
Babcock v. Millard, Fed. Case, No. 699.
Thompson v. McReynolds, 29 Fed., 657.
Hatch v. Door, 4 McLean, 112, Fed. Case, No. 6206.

And, in the following cases, the suits were brought either to enjoin the prosecution of a pending action or the enforcement of a judgment, where the judgment itself was attacked.

Dunn v. Clarke, 8 Peters, 1.
Pennock v. Coe, 23 How., 117,
Jones v. Andrews, 10 Wall., 327.
Cortes Co. v. Thannauser, 9 Fed. Rep., 226.
Bank of Leeland, Fed. Case, No. 9452.
Dunlap v. Stetson, 4 Mason, 349, Fed. Case, No. 4164.

SEVENTH.

Application of principles to the facts of the present case.

I. It is manifest that there was no ancillary jurisdiction in the present case, owing to the possession of the fund by the Court. The land had been sold and the proceeds paid to a citizen and resident of New York (p. 237). No part of the fund was held by Mr. Carson, in Texas, as the Court expressly found (p. 354).

II. The present suit was not brought to induce the court to take any action with reference to the judgment at law (Salinas v. Kellogg).

1. The Court was not asked to assist in carrying the judgment into effect, because the judgment had already been carried into effect; and the Court could not have rendered any such assistance, even if it had been asked to do so, because the common law writ of assistance was all that the plaintiff required to make the judgment effective.

In the present case, the writ of assistance was not required, as the possession was not questioned.

2. The Court was not asked to vacate or modify the judgment in any respect; and the mere fact of bringing the present suit was a formal ratification of the judgment, even if it had not already stood unquestioned for eight years.

Robb v. Vos, 155 U. S., 13.

3. The only ground remaining, upon which it could possibly be contended that the present suit was an ancillary one, was that the Court was appealed to to prevent the judgment from being used for a fraudulent purpose. In the original bill of complaint, the Court was asked to enjoin the defendants Stillman and Carson "from mak-

ing fraudulent use of said judgment" (p. 17), and a preliminary injunction was granted accordingly (pp. 63–66). But, obviously, that injunction was a complete nullity. On the facts set forth in the bill, the defendants could not in any conceivable manner have made fraudulent use of the judgment, because the judgment was absolutely *functus officio*. By it, possession had been awarded to Stillman and Carson, and they had conveyed the property to the United States, which was shown to be in possession. It might as well be claimed that, in an action of replevin, where the plaintiff had recovered the chattels and afterwards sold and delivered them to a third person, and where the validity of the judgment was not questioned, he could be restrained from misusing the judgment because he had obtained it by consent; or that he could be so restrained in an action in debt, where a personal judgment had been entered against the defendant and an execution issued and returned satisfied, and no question was raised as to the validity of the judgment. "An execution is the end of the law. It gives the successful party the fruits of his judgment."

United States v. Nourse, 9 Pet., 8, 28.
Central National Bank v. Stevens, 169 U. S., 432, 465.

III. Not only did the complainant in this case not attack the judgment at law, but he based his right to maintain the present suit upon facts which did not come into existence until eight years after the entry of that judgment; that is, upon a new and distinct cause of action, subsequently accruing.

EIGHTH.

The Circuit Court was without jurisdiction either at law or in equity.

This case does not fall within the class of cases such as Louisville Trust Co. v. Knott (191 U. S., 225), where, although the Circuit Court has jurisdiction, it has no jurisdiction as a court of equity, because the action should have been brought on the law and not on the equity side of the court. There was no jurisdiction in the present case, either at law or in equity.

I. There was clearly no jurisdiction at law; because there was no diversity of citizenship and the Court had no control of the proceeds of the land or of the person of Mr. Stillman, and personal process was not served upon him within the State of Texas.

Pennoyer v. Neff, 95 U. S., 714.

II. Neither did the Court have any equitable jurisdiction; because a court of chancery would, under no circumstances, have had jurisdiction of the subject of the bill. There was no fund in the possession of the Court, and the defendant Stillman did not reside and could not be served within its jurisdiction. What the complainant attempted to complain of in the present case was not the previous judgment, but a disregard of a stipulation or agreement entered into in the former action, to sell the property which formed the subject of the action and pay a portion of the proceeds to the credit of certain persons who were to act as arbitrators in making distribution. But the bill showed that one arbitrator had died and another had declined to act, that their successors had not been appointed and that Stillman and Carson had no power to appoint such successors and that parties to the agreement, other than Stillman or Carson, had subsequently repudiated it, so that it could not be carried into effect (pp. 14,

28, 497). Therefore, no breach of the agreement by Stillman and Carson was shown. But the complainant, asserting that they had disregarded the agreement, asked the Court, not to vacate the judgment, not even to attempt to enforce the agreement, but to ignore the agreement altogether and adjudicate upon the rights of the parties as they existed at the time it was entered into. Now, that is evidently something which is beyond the power of any court. When the parties were before the court in the original action at law, they claimed certain undivided interests in the land which was the subject of the action. Although some of the parties to the action at law were not parties to the agreement (pp. 26, 29, 415, 455, 456; Salinas v. Stillman, 66 Fed. Rep., 677, 680), and the judgment was rendered upon a verdict and upon additional evidence (pp. 494, 496), yet the complainant contends that the judgment was rendered by consent which vested the title in Stillman and Carson. Assuming that this contention is correct, it does not follow, as asserted by the complainant, that the title vested in Stillman and Carson was in trust. That is merely the averment of a legal conclusion, without any foundation in fact, and must be treated as a nullity.

U. S. v. Ames, 99 U. S., 35, 45.
Ambler v. Choteau, 107 U. S., 586, 591.
Pennie v. Reis, 132 U. S. 464.
Interstate Land Co. v. Maxwell Land Co., 139 U. S., 569, 578.
Kent v. Land Superior Co., 144 U. S., 75, 91.
Chicot County v. Sherwood, 148 U. S., 529, 536.

In other words, in the present case, a certain status existed at the time the arbitration agreement was executed. According to the complainant, the parties voluntarily allowed that status to be changed by the judgment. But they do not complain of the judgment. Therefore, they will not be allowed to complain of the status brought about by the judgment. No court

of equity has any jurisdiction to entertain a suit based upon the breach of a stipulation upon which a judgment was entered and asking to have the issues in that suit litigated over again, where no complaint is made of the judgment itself. So long as the judgment stands and is not questioned, the court must treat it as decisive of the issues in the case. Not only must full faith and credit be given to such judgment by all other courts; but the court which rendered it has no power to litigate anew the issues determined by it, the judgment itself not being attacked. To hold otherwise, would be to assert that a final judgment in an action at law absolutely disposes of all the issues directly involved in the case and at the same time leaves those issues to be determined again, if some stipulation in the case is subsequently disregarded. Before a party can be held to complain of the violations of such an agreement and be granted a rehearing upon the issues involved in the principal action, he must ask to have the judgment in that action set aside. He cannot, at one and the same time, affirm the validity of the judgment and ask the court to litigate anew the issues finally determined by the judgment. If that could be done, there would be no end to litigation and no finality to judgments. The proposition is so obvious that it requires no citation of authorities in its support. A similar contention by another of the parties to this same arbitration agreement was summarily disposed of by the United States Circuit Court of Appeals.

Salinas v. Stillman, 66 Fed. Rep., 677, 680.

In that case, the Court commented on the fact that there was no averment that the parties had been misled or deceived as to the purport and effect of the agreement and that there was no impropriety in not having brought the agreement to the attention of the Court; and it said (p. 680):

> "So far as it was attempted by the parties to settle their differences out of court by arbitration or

in any other amicable manner, the proceeding is to be commended rather than adversely criticised. Parties may adjust their differences out of court and afterwards give effect to the settlement by a judgment or decree of court, which will be as binding and conclusive as any other adjudication."

In Last Chance Mining Co. v. Tyler Mining Co. (157 U. S., 683, 692) this Court said:

"The withdrawal by defendants of their answer may have prevented any judicial determination as to the special facts set up in defense or avoidance of plaintiff's claim. But such withdrawal was not operative to take out of the case the complaint or the allegations of fact therein contained or to prevent a judicial determination of those facts."

And, in the same case, the Court said:

"The essence of estoppel by judgment is that there has been a judicial determination of a fact; and the question always is, has there been such determination and not upon what evidence or by what means was it reached."

No Court of Chancery, however broad its jurisdiction, would have had power to assume jurisdiction in present case, the fund not being in its possession, some of the parties not being within its jurisdiction and the validity of the judgment in the previous action not being in any way called in question. The mere breach of a contract confers no equitable jurisdiction; and a bill for damages, for breach of contract, is entirely foreign to equitable jurisprudence.

Richards v. Lake Shore Ry. Co., 124 Ill., 569.

As is also a bill in equity to recover the possession of land.

Lewis v. Cox, 23 Wall., 466.

To contend, as is done in the present case, that, because a party to a contract has violated its terms,

therefore, a court of equity will interfere, not to enforce the contract, but to disregard it altogether and relegate the parties to the status which existed prior to entering into the contract and to determine their legal rights by ignoring the change which was voluntarily made in the rights by the contract, would be to introduce an entirely new principle into our jurisprudence, to disregard a contract voluntarily entered into, because one of the parties has been guilty of a breach of it, and, thereupon, to ascertain what the rights of the parties would have been if they had not voluntarily changed them.

III. The position of the complainants in the present suit is substantially the same as if they had not been made parties to the original action at law. In that case, if they had subsequently shown that they had an interest in the land, they might either have enforced a recognition in a proper action, ignoring the judgment, or they might have elected to treat the judgment as valid and have proceeded against the persons who received the proceeds of the land for the proportion to which they were entitled. In the latter event, it is quite clear that the action would not be ancillary to the one in which the title to the land had been adjudicated, but would be merely an action for the recovery of money received to the use of the plaintiff.

IV. Upon the complainant's theory, if a joint money judgment was rendered in a Federal Court in favor of two plaintiffs who were citizens of the same place, and it was specifically adjudicated that the payment by the judgment debtor to either of the judgment creditors would be a satisfaction of the judgment, and thereafter the amount was paid to one of the creditors, the other creditor might maintain a suit, in the same Court, against the co-plaintiff, on the ground that it was "ancillary", to recover a definite portion of the fund by reason of a stipulation between them in the action at law.

NINTH.

Complainant's Remedy.

I. On the assumption that the complainant had an interest in the Fort Brown Reservation and was entitled to the portion of the proceeds allowed by the Court below ($2,771.30, or less than two per cent.), his remedy for the breach of the arbitration agreement was clear and well defined, namely, an action at law against Mr. Stillman, to whom the proceeds had been paid. This would have been the familiar action of money had and received to complainant's use. It is not claimed that Mr. Stillman was not fully able to pay any amount which might have been recovered by the complainant against him. On the contrary, the record shows that Mr. Stillman was the only person who, through a long series of years, advanced the funds necessary to prosecute the claim against the United States for the use and occupation of the Fort Brown property; and, subsequently, for ten years more, he alone supplied the means necessary to enforce the payment of the appropriation, which was subjected to continuous attacks, both in the War Department and in Congress (pp. 236, 237). In other words, it is perfectly clear that whatever cause of action the complainant had was an independent one, growing out of the alleged breach of the contract, and having nothing whatever to do with the judgment in Salinas v. Kellogg, which finally disposed of the issues in that action. That judgment was completely carried into effect by the sale of the property to the United States; and its validity has never been questioned.

The plaintiff could not have maintained a suit in equity to enforce the arbitration agreement specifically, because he showed affirmatively that, owing to the death of the arbitrators, the agreement could not have been so enforced; while it is elementary that any party to an arbitration agreement may withdraw from it at

any time before the award has been made. Neither could he have maintained an independent suit in equity for an accounting; because his interest in the proceeds of the property did not in any way depend upon a general accounting of the fund, but in establishing affirmatively that he originally had title to a portion of the property from which the proceeds were derived. Having shown that, it was of no consequence what others might show; they could prove nothing which would conflict with his claim.

II. But whether the action was one at law or in equity, it could be maintained only in a court that held or could acquire a lien upon the proceeds of the property or which had jurisdiction over Mr. Stillman personally. Upon the facts of the present case, only a New York Court could have acquired jurisdiction. The action of the Court below, in assuming jurisdiction and directing a non-resident to pay a large sum into its registry for the purposes of litigation, was apparently based upon the theory that the complainant should not be forced to go beyond the State of Texas to establish his legal rights; and for the purpose of making this theory effective, the Court not only required a non-resident citizen to pay over the entire appropriation, although only one-half of it was claimed by the complainant, but it usurped the jurisdiction of the probate court in order to do what it conceived to be substantial justice to all concerned, by refusing to direct distribution of half the fund remaining to Mr. Carson, as administrator, and by directing this half to be paid to the " heirs " of the Estate which he represented, thus ignoring the rights of creditors of that estate, and the rights of legal representatives and creditors of deceased " heirs," and by requiring Mr. Stillman, who had large claims against the Cavazos estate, to intervene specially in the present suit for the purpose of establishing such claims (pp. 409, 411-414).

It is undoubtedly true that it is inconvenient and often a hardship to compel a suitor to go into a foreign

jurisdiction for the purpose of asserting his legal rights; but that is unavoidable under our present judicial system and form of government.

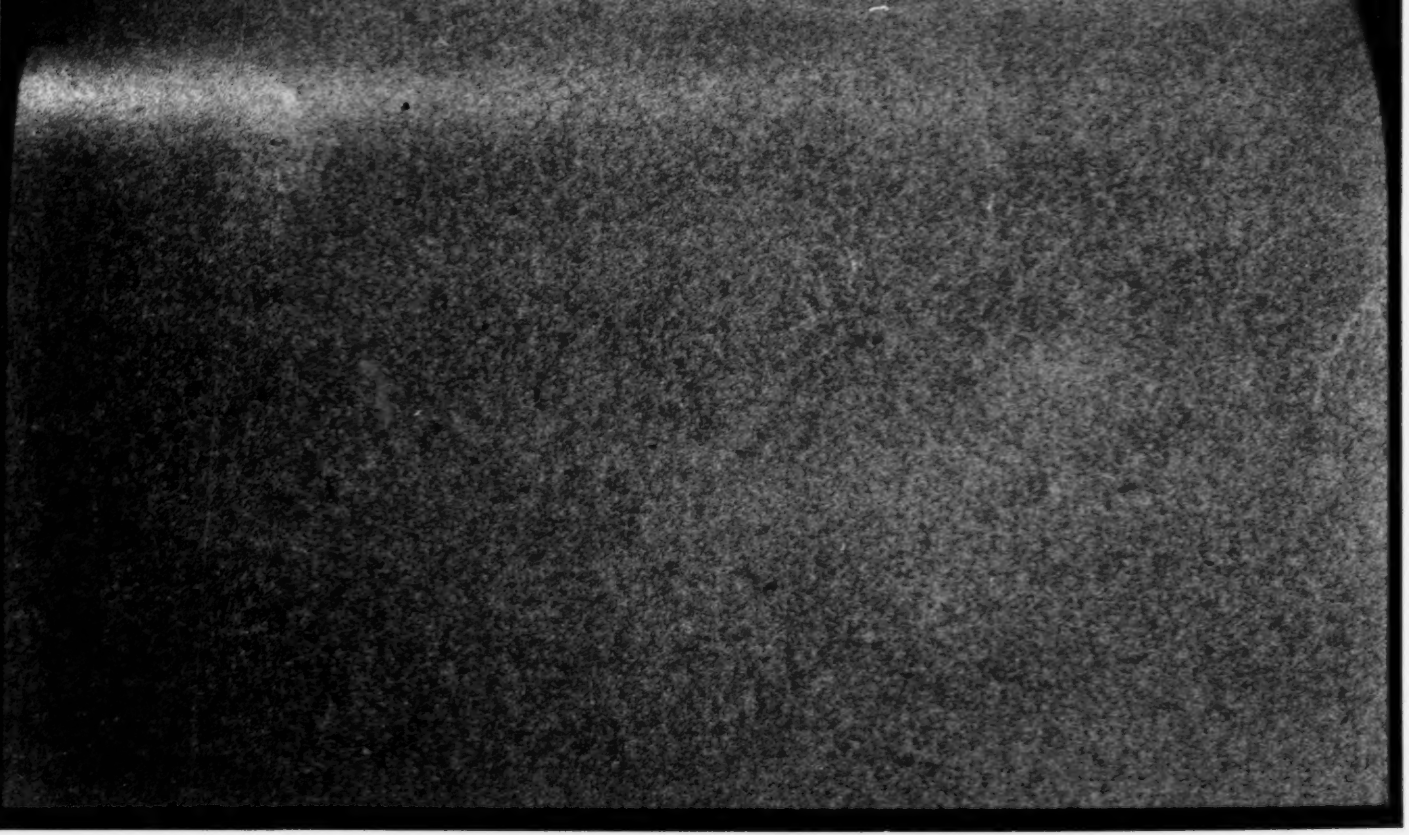
TENTH.

The judgment of the Court below should be reversed, the intermediate orders and decrees set aside and restitution directed to be made to Mr. Stillman of the amount paid into Court by him.

Washington, March, 1905.

Respectfully submitted,

JOHN A. GARVER,
JAMES M. BECK,
Counsel for Appellant, Stillman.



IN THE

United States Supreme Court.

File No. 19201.
Term No. 550.
Record filed January 16, 1904.

JAMES STILLMAN,
APPELLANT,
against
C. B. COMBE, Independent Executor of Stephen Powers, Deceased, *et al.*,
APPELLEES.

Appeal from the United States Circuit Court for the Southern District of Texas, Brownsville Division.

Motion of the Appellees to Advance the Cause.

C. L. BATES, and W. N. PARKS, Counsel for the Appellees, C. B. Combe, Independent Executor of Stephen Powers, deceased, and others.

J. D. CHILDS, Counsel for the Appellees, Rafaela M. De Garcia Cavazos and others.

Now come, by their counsel, the appellees, C. B. Combe, Independent Executor of Stephen Powers, deceased, C. B. Combe, in his own right, Frederick J. Combe, Charles B. Combe, Jr., Frank B. Combe, Joseph K. Combe, Emil P. Combe, C. L. Bates, W. N. Parks, S. J. Brooks, receiver,

Rafaela M. De Garcia Cavazos, Rafaela G. M. Cavazos, Adella G. M. Cavazos, Josephina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos and Jose G. M. Cavazos, and move this Honorable Court to advance and hear this cause under the provisions of United States Supreme Court, Rule (32) thirty-two: And for grounds of this motion the said appellees show the following, to-wit:

1. This cause is appealed to this court from the Circuit Court of the United States for the Southern District of Texas, Brownsville Division, under Section 5 of the Act of March 3, 1891, Chapter 517, and the only question in issue in this cause in this court is the question of the jurisdiction of the court below, namely, the said Circuit Court of the United States for the Southern District of Texas. The order of the court below granting this appeal contains the following: "This appeal is granted, however, solely upon the question of jurisdiction, as set forth in the said petition for appeal." (Record p.)

Respectfully submitted,

C. L. Bates

H. P. Parks

Counsel for Appellees, C. B. Combe, Independent Executor of Stephen Powers, deceased, and others.

J. E. Childers

Counsel for Rafaela M. De Garcia Cavazos and others.

FILE COPY.

FILED
OCT 29 1904
JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 174.

JAMES STILLMAN, APPELLANT,

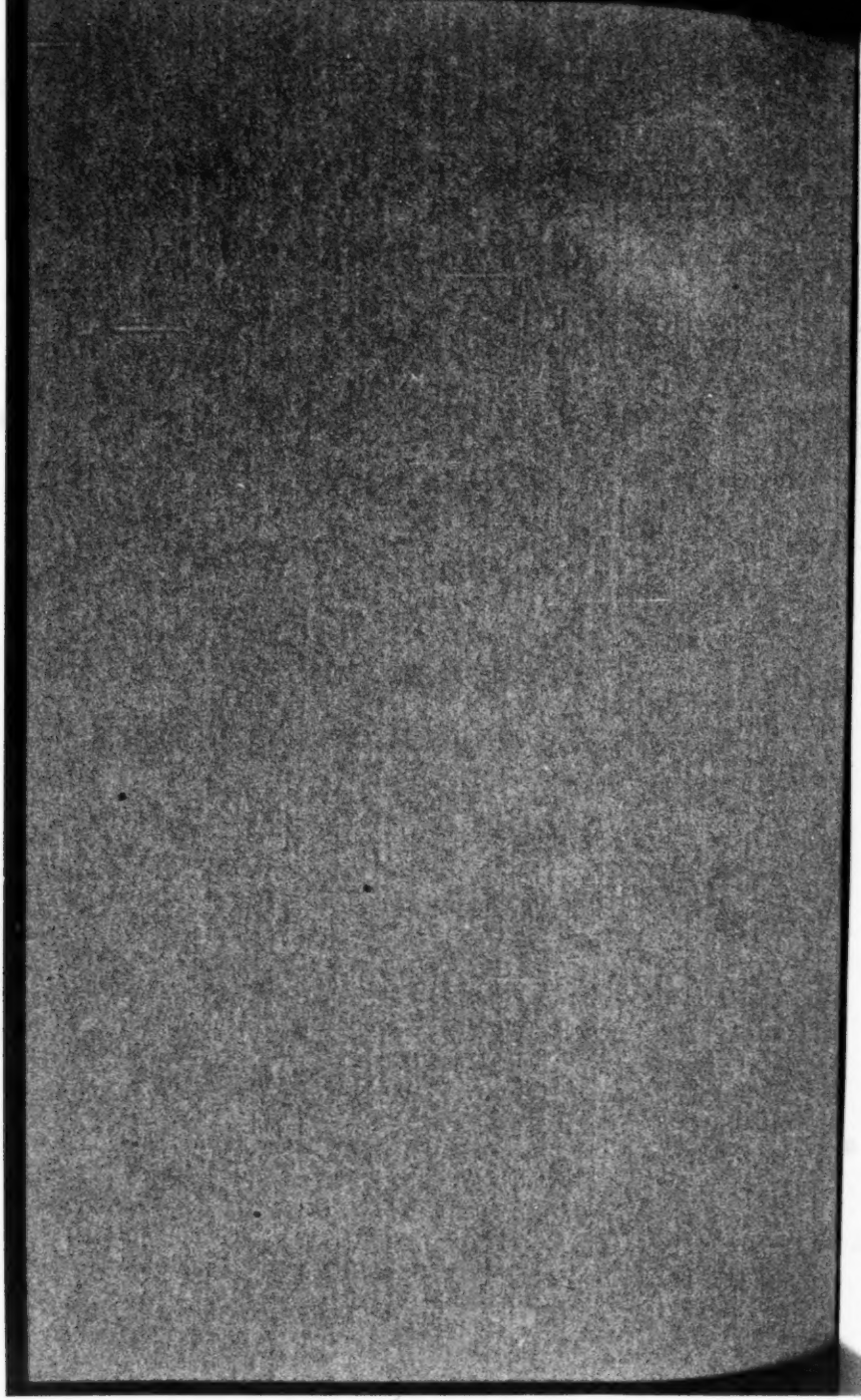
vs.

C. B. COMBE, INDEPENDENT EXECUTOR OF THE ESTATE OF STEPHEN POWERS, DECEASED; C. B. COMBE, ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS.

Brief and Argument for Appellees.

FRED BEALL,
WASHINGTON, D. C.
C. L. BATES,
SAN ANTONIO, TEXAS.
Counsel for Appellees.



IN THE

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JAMES STILLMAN, APPELLANT,

vs.

C. B. COMBE, INDEPENDENT EXECUTOR OF THE ESTATE OF STEPHEN POWERS, DECEASED; C. B. COMBE, ET AL., APPELLEES.

BRIEF AND ARGUMENT OF FRED BEALL, WASHINGTON, D. C., AND C. L. BATES, SAN ANTONIO, TEXAS, COUNSEL FOR APPELLEES, C. B. COMBE, INDEPENDENT EXECUTOR OF THE ESTATE OF STEPHEN POWERS, DECEASED, AND C. B. COMBE, FREDERICK J. COMBE, CHARLES B. COMBE, JR., FRANK B. COMBE, JOSEPH K. COMBE AND EMIL P. COMBE.

STATEMENT OF THE CASE BY APPELLEES' COUNSEL.

I. A QUESTION OF JURISDICTION ONLY INVOLVED IN THIS APPEAL. This case is appealed to this court by James Stillman, who was a defendant below, from a final decree (Rec. 406-415), rendered December 12, 1903, by the Circuit Court of the United States for the Southern District of Texas, Brownsville Division, under Section 5 of the Act of March 3, 1891; and the only question now in issue, as appears from the order of the court granting the appeal, is the jurisdiction of the court below. (Rec. 561-566.)

II. THIS IS A CASE OF ANCILLARY JURISDICTION. The jurisdiction in this case is ancillary; this suit is ancillary to

and dependent upon a certain suit at law, styled, "Heirs of Miguel Salinas vs. William Kellogg et al., No. 248," on the law docket in the said Circuit Court of the United States for the Southern District of Texas, Brownville Division. The final judgment in said suit at law was rendered July 14, 1887; and this present suit was instituted in the same court on June 14, 1897, by appellee, C. B. Combe, independent executor of Stephen Powers, deceased, by the filing of his original bill (Rec. 1-18), with exhibits (Rec. 18-36), against appellant, James Stillman, and one Thomas Carson individually, and as administrator C. T. A. of Maria Josefa Cavazos, and against eighteen other persons, all of them being parties to said former suit at law. In his original bill, the plaintiff alleged in substance the proceedings in the former suit; and on October 29, 1898, he filed an amended bill (Rec. 156-180), making new parties, and attaching thereto as exhibit "E" a certified copy of the entire record in said suit at law, the language of said amended bill being: "And the plaintiffs attach hereto a duly certified copy of the record in said suit No. 248, on the law docket of this court, marked exhibit E, and here now referred to and made part of this amended bill." (Rec. 163.) But the clerk, in printing this record, in a note says: "Note.—Exhibit, next in order to the foregoing document is not copied because the same consists of part of the record in No. 248, and is hereinafter copied in full," (Rec. 180); and said exhibit E is found in the record on pages 415-457. On May 1, 1899, plaintiffs further amended their bill. (Rec. 306-320.)

III. The Jurisdictional Facts Averred and Proved by Plaintiffs. The plaintiffs (appellees) averred and proved the following jurisdictional facts to sustain their contention that the lower court had ancillary jurisdiction of this suit in equity, namely:

1. In the year 1846, the United States took possession of a tract of land, which was private property, situated in Cameron County, Texas, (since known as Fort Brown Reservation), and have since held it as a military reservation, but never paid for it nor acquired title to it, until after March 3, 1885, on which date congress appropriated $160,000.00 to enable the Secretary of War to acquire "a good and valid title" to the land and pay for its use and occupation, and providing "that no part of this

sum shall be paid until a complete title is vested in the United States, and the full amount of the price, including rent, shall be paid directly to the owners of the property." (Original Bill Arts. III, IV and VI, Rec. 3-5; Stillman's Answer, Arts. III, IV and VI, Rec. 243-244; Carson's Answer, Arts. II, III and V, Rec. 274-277; 23 U. S. Stats., at L., 507.)

2. On June 29, 1886, nine of the heirs of Miguel Salinas filed suit (trespass to try title) in the District Court of Cameron County, Texas, against Col. William Kellogg, then commanding officer at Fort Brown Reservation, to recover the title and possession of a part of said tract of land; and on June 20, 1886, H. E. Woodhouse intervened in that suit, claiming to have acquired the shares of four of the Salinas heirs in said land; and on the application of defendant, Col. Kellogg, the suit was removed into the Circuit Court of the United States for the Western District of Texas, Brownsville Division (now in the Southern District of Texas); the transcript from the State court having been filed in the Federal court on November 3, 1886, and entered on the law docket of the court as "No. 248, Heirs of Miguel Salinas vs. William Kellogg et al," and was proceeded with as a suit pending in that court. (Original Bill, Art. VII, Rec. 5, 6; Stillman's Answer, Art. VII, Rec. 244; Carson's Answer, Art. VI, Rec. 277; Transcript in suit No. 248, Rec. 415-422.)

3. On December 27, 1886, Rudolph Kleburg, United States district attorney for the Western District of Texas, acting under instructions from the attorney general of the United States, intervened in said suit No. 248 for the United States, and had them made parties defendant therein, and filed answers for defendant Kellogg and the United States, in which he pleaded "not guilty," and set up outstanding title to said tract of land in a large number of persons, among them the appellant, Stillman, and Thomas Carson, administrator of Mrs. Cavazos, and the appellee, C. B. Cambe, executor of Powers, deceased, and also the heirs of said decedent, and caused all of said persons to be made parties defendants to said suit, and citation ordered to be issued to them; and Stillman and Carson and others, in writing, waived citation, and voluntarily entered their appearance and submitted themselves to the jurisdiction of the court in said suit No. 248, and filed pleadings, and those not waiving

process were served with citation. (Original Bill, Arts. VII and VIII, Rec. 5-8; Stillman's Answer, Arts. VII and VIII; Carson's Answer, Art. VI, Rec. 277-279; Transcript in suit No. 248, Rec. 422-428, and 455.)

4. There were twenty-four (24) defendants to said suit at law No. 248, and all of them filed answers, and all, except Kellogg and the United States, filed pleas in reconvention, claiming title to portions of said land, which claims all conflicted with each other, except the claims of Stillman and Carson, they each claiming an undivided one-half interest of the whole; all of said answers and pleas in reconvention (except the answers of Kellogg and the United States) having been filed within three days of each other, the first on July 11, 1887, and the last on July 13, 1887, and the final judgment in said suit having been rendered on July 14, 1887. (Original Bill Art. VIII, Rec. 6-8; Stillman's Answer, Art. VIII, Rec. 244; Carson's Answer, Art. VI, Rec. 277-279; Transcript in suit No. 248, Rec. 429-457.)

5. On July 13, 1887, the day before the entry of final judgment in said suit at law No. 248, the defendant (appellant Stillman) and Carson, administrator, and plaintiff (appellee) Cambe, executor, and nineteen (19) other parties to said suit, entered into a written agreement (exhibit D. to original bill, Rec. 26-30), in which it was, among other things, stipulated, in substance, as follows:

(1) That in the trial of said suit, the issues made by the pleadings therein should not be litigated nor adjudicated, and that the conflicting claims to said land and the fund appropriated to pay for said land, should not be decided upon the trial of said suit, but that a verdict and judgment should be rendered and entered therein by consent, vesting the complete title to Fort Brown Reservation, and all money owing by the United States for its use and occupation, in defendants Stillman and Carson, administrator. (2) That upon securing such verdict and judgment, Stillman and Carson should make the appropriate deed of conveyance, vesting a good and valid title in and to Fort Brown Reservation and the rents in the government of the United States, and should obtain from the Secretary of War a warrant upon the Treasurer of the United States, for the fund of $160,000.00, appropriated to pay for same, and should, without delay, deposit same (less $20,000.00 due for

services) in the bank of Ball, Hutchings & Co. of Galveston, Texas, to the credit of certain arbitrators named in the agreement. (3) And the parties to said agreement thereby submitted their claims to said tract of land (Fort Brown Reservation) and said fund of $160,000.00, and all the issues made by the pleadings in said cause, to the arbitrators named, or others to be chosen, whose decision should be final, and who should, upon their decision, disburse said fund accordingly. (Original Bill, Arts. IX and X, Rec. 8-10; Exhibit D. to Original Bill, Rec. 26-30; Stillman's Answer, Art. X, Rec. 245, admitting execution of the agreement; Carson's Answer, Art. IX, Rec. 281, admitting execution of the agreement.)

6. On July 14, 1887, pursuant to said agreement, exhibit D, a final judgment was entered in said suit No. 248, by consent and upon said agreement, vesting the title to Fort Brown Reservation, and all money due for its use and occupation, in Stillman and Carson, administrator, and they subsequently made a conveyance of the property to the government, and a relinquishment of the claim for use and occupation, and collected the $160,000.00, and carried it to New York City, where the defendant (appellant) Stillman converted the whole of it to his own use, and repudiated his trust in regard thereto; and in the collection and conversion of said fund, Stillman and Carson acted in collusion with each other, and made fraudulent use of said judgment which they had obtained by consent of parties, and upon an agreement to bring said fund to Texas, and abide the decision of abritrators as to its ownership. (Original Bill, Arts. XI, XII and XIII, Rec. 10-15; Exhibit E to Original Bill, Rec. 26-30; Stillman's Answer, Art. XIII, Rec. 246-247; Carson's Answer, Art. XII, Rec. 283-285; Deed of Stillman and Carson to the government, Exhibit F, Rec. 32, 33; Receipt of Stillman and Carson to the government for $160,000.00 Fort Brown Fund, Rec. 2665-285; Stillman's Answer, Rec. 265-269, where he states an account of the fund and admits that he converted the whole of it; Correspondence between District Attorney Kleburg and the Attorney General, showing an agreed judgment, Rec. 472, 473; Testimony of defendant Carson, proving that the final judgment in suit No. 248 was a consent judgment, Rec. 544; Deposition of James R. Cox, answer to 18th Int., Rec. 496, and his answer to the 19th Cross Int., Rec. 500, 501.)

7 Plaintiffs (appellees) averred that, by the joint operation of the judgment in suit No. 248, and exhibit D, a trust was created, by which the title to Fort Brown Reservation and the money due for its use and occupation were vested in Stillman and Carson, for the benefit of all the parties to said suit, to be dealt with in the manner defined in the agreement, and that Stillman and Carson so accepted the title, (Art. XII, Orig. Bill, Rec. 13); and this was the understanding of Mr. James R. Cox, the attorney for Stillman and Carson in that suit, who says in his deposition, answer to 19th cross interrogatory (Rec. 499, bottom of page) that: 'While I have acted in these matters, primarily, as attorney and counsel of Stillman and the Cavazos estate, yet, subsequent to the judgment of July 14, 1887, I was certainly acting in the interest of any one who had any interest in the Fort Brown appropriation."

There is absolutely nothing in the record controverting the above facts. Appellant (defendant) Stillman took the testimony of Mr. James R. Cox, who as attorney represented him and Carson on the trial of suit No. 248, for the purpose of trying to controvert the fact that the judgment in that case was by consent; but the testimony of Mr. Cox shows conclusively that it was a *consent judgment*, no testimony being offered except by Stillman and Carson, and a formal verdict directed for them by the court without objection from the counsel of the other parties, who were then in court. (Rec. 496, 500, 501.)

IV. Plaintiff's Prayer for Relief. The substance of the prayer of the bill is: (1) That an interlocutory decree be made, requiring Stillmann and Carson to deposit the fund of $160,000.00 in the registry of the court, or pay it to a receiver, as the court might direct; (2) that the conflicting claims to the land and fund be adjudicated and settled; (3) that Stillman and Carson be enjoined from making further fraudulent use of the judgment in suit No. 248, and compelled to account for the fund with interest, and the trust created by the agreement and judgment be enforced; (4) that on final hearing a decree be entered for the payment of the fund to the claimants, found by such decree to be entitled to same; (5) prayer for process; (6) answers on oath waived, except as to two specific interrogatories touching the collection of the fund, and the agreement of July 13, 1887. (Rec. 17, 18.)

V. Pleas to the Jurisdiction. Stillman and Carson filed pleas to the jurisdiction (Rec. 71-79), which amount to a general denial, (1) of a fraudulent use of the judgment in suit No. 248, and (2) that any trust was created by said judgment and the agreement of July 13, 1887, and on these points the pleas state mere conclusions of law. The pleas were overruled by the court (Rec. 126), and the cause proceeded to a final decree.

VI. Receiver—Injunction—Interlocutory Appeal. Upon notice to Stillman and Carson (Rec. 48-59), plaintiffs made application to the court for the appointment of a receiver, injunction, and order requiring Stillman and Carson to pay the Fort Brown fund into court (Rec. 54); Carson, who is a citizen of Texas, filed answer to this motion, making defense for himself and Stillman, denying the jurisdiction of the court (Rec. 55-59); and on July 15, 1897, the court made an order (Rec. 62, 63) appointing a receiver and granting a preliminary injunction, restraining and enjoining Stillman and Carson from using the said judgment in suit No. 248 for the purpose of depriving the plaintiff and others defendants to this suit, of their interest in the Fort Brown fund, and from refusing to pay said fund into the hands of the receiver, and from refusing to account to the court for the fund. In said order (62, 63), the court having before it the record in suit No. 248, found as a fact and decreed that the court "is of opinion that the court has jurisdiction of this cause as being ancillary to suit No. 248 on the law docket of this court, and is therefore of opinion that the same should be sustained." (Rec. 62); and from said order Carson appealed to the United States Circuit Court of Appeals for the fifth circuit, and the appellate court affirmed the order appealed from, *in totidem verbis*. (See the opinion of the court of appeals, Rec. 137-146, and the mandate of that court, Rec. 133-136.)

VII. Fund Brought Under Control of Court. On May 23, 1899, the court directed Stillman to pay $50,000.00 of the Fort Brown fund into the registry of the court, and to execute his bond for $76,889.98, with surety conditioned to satisfy any decree that may be entered against him in this cause, (Rec. 354, 355); and this order was complied with (Rec. 356-379), and the fund disposed of by the final decree in this cause. (Rec. 406-415.)

BRIEF AND ARGUMENT.

First Proposition.

In order to constitute a *consent judgment*, it is not necessary that the agreement to enter it by consent should be filed as a paper in the cause, nor that the agreement and consent should be brought to the attention of the court, nor that the consent of parties should be made to appear in any manner upon the record. The consent of parties is a *fact to be proved*, like any other fact.

Authorities.

Campbell vs. Railroad Co., 1 Woods' Rep., 368, Fed. Cas. 2, 366.

Argument. In the case just cited under this proposition, the agreement to enter the decree was neither filed nor brought to the attention of the court; and Mr. Justice Bradley, in passing upon the fact of consent, said: "The very first article of the agreement is that an agreed decree be entered; this article, taken in connection with the fact that the decree was signed and entered at the first opportunity after the agreement was made, and with the evidence on the point, the inference is irresistible that the decree was signed and entered in pursuance of the agreement, and was a consent decree." In the case at bar, the *first article* of the agreement (Exhibit D., Rec. 27), is that the parties "will unite in promoting and procuring a verdict and judgment in this cause to the effect that the whole of said property, and all dues appertaining thereto, is vested in and held by James Stillman, of New York, and Thomas Carson, administrator, with will annexed, of the late Mrs. Maria Josefa Cavazos, deceased, who are reconvening defendants in said action."

The agreement begins as follows:

"Agreement, made this thirteenth day of July, 1887, between and among certain reconvening defendants in this cause.

United States Circuit Court, Western District of Texas.
Heirs of Miguel Salinas, H. E. Woodhouse, et als.,

versus

Wm. L. Kellogg, James Stillman, P. G. Cavazos, Thomas Carson and others, defendants, which is likely to be called and tried in said court tomorrow." (Rec. 26.)

Mr. Cox testifies that this agreement was signed by all the parties thereto on July 13, 1887, the day before the judgment

was entered, at Carson's office, except Woodhouse, who signed it the next morning at the court house. (Rec. 499.) The execution of this agreement is admitted by all, and Carson testifies that it was an agreed judgment (Rec. 544); and Kleburg, who was United States district attorney, on the ground representing the government, represented to the government on July 11, 1887, that the parties were "to enter agreed judgment," (Rec. 472), and subsequently reported, substantially, that it had been done. (Rec. 473.) To the same effect is the testimony of Mr. Cox; he states that no testimony was offered except by Stillman and Carson, and a verdict was formally directed for them, (Rec. 496), in the presence of the counsel of the other parties without objection from them. (Rec. 500.) This testimony of Mr. Cox proves a *consent* to the judgment in the presence of the court. There was no litigation of the issues made by the elaborate pleadings in the case. Stillman, while admitting in his answer the execution of the agreement of July 13, 1887, (Rec. 245, Art. X), denies that the judgment was by consent (Rec. 245), but it does not appear that he was present at the trial or had any personal knowledge of the fact, and, besides, plaintiffs waived an answer on oath (Rec. 18), except as to two specified interrogatories, and his answer is not evidence upon the issue of a consent judgment. (Equity Rule, 41.) The Supreme Court of Massachusetts has held that in entering a consent judgment even against an infant it is not necessary to inform the court of the agreement. (Tripp vs. Gifford, 155 Mass., 108.)

Parties to a suit have a right to agree to anything they please in reference to the subject matter of their litigation; and the courts will uphold such agreements; the parties to suit No. 248 had the lawful right to make the agreement which they did make, and Mr. Stillman cannot complain that his counsel did not bring that agreement to the attention of the court. (Railroad vs. Ketchum, 101 U. S., 289-300.)

SECOND PROPOSITION.

The agreement of July 13, 1887, and the judgment of July 14, 1887, in suit No. 248, created an express, active, special trust; the trust was created in the most formal manner, and contains all the elements usual in such trusts, viz.: (1) Fort Brown Reservation was designated as the trust estate; (2) defendants Stillman and Carson were constituted the trustees; (3) the title

to the trust estate was by the consent judgment vested in the trustees; (4) the agreement declared the trust, defined its purpose, which was to convert the trust estate into money, by conveying it to the United States, and collecting the $160,000.00 appropriated therefor, and depositing the fund to the credit of arbitrators named, to be disbursed to the parties according to their respective rights in Fort Brown Reservation and the fund as the representative of the land, when such rights should be determined and ascertained.

Authorities.

Salinas et al. vs. Stillman et al., 66 Fed. Rep., 677.
Carson vs. Combe, 86 Fed. Rep., 202.
Pomeroy's Equr. Jur., Secs. 1159, 1160.
Perry on Trusts Secs, 18, 24, 81, 82, 448.
Lewin on Trusts and Trustees, Star page 56 and note 1; Star page 108, Star page 109 and note 1.

ARGUMENT. In Salinas vs. Stillman, and Carson vs. Combe, *supra*, the United States Circuit Court of Appeals for the fifth circuit held that this identical transaction created a trust. The opinion of the court in the latter case, rendered in this suit on an interlocutory appeal, is found in the Record, 137-146. The judgment of the court in suit No. 248 was simply used as a means of conveyance, by matter of record, to vest the title to Fort Brown Reservation in Stillman and Carson as trustees, and it was competent for the parties to adopt that method of effectuating their lawful intention and agreement in regard to the property.

THIRD PROPOSITION.

The appellant (Stillman) and Carson having procured a consent judgment in suit No. 248, vesting in them a good and complete title to Fort Brown Reservation, which they conveyed to the United States, and received therefor $160,000.00, appropriated to pay for same, upon a trust declared and defined in the agreement of July 13, 1887, which expressly reserved the decision and determination of the conflicting claims of the parties to Fort Brown Reservation and the said fund of $160,000.00 until after it should be collected, and required Stillman and Carson to deposit said fund in a bank in Texas to the credit of named arbitrators, who should decide and determine the conflicting claims of the parties to the fund, and disburse it accord-

ingly, and the deposit of said fund with arbitrators with power to decide the claims thereto as aforesaid being the consideration upon which Stillman and Carson procured said consent judgment, and said fund having been after its collection transmitted by the agent of Stillman and Carson to New York and paid over to Stillman, who converted the whole of it to his own use and repudiated his trust, they, Stillman and Carson, were thereby guilty of making an unjust, inequitable and fraudulent use of said judgment, and were guilty of making a fraudulent use of the process of the court which rendered the judgment, and were guilty of violating the plain and essential provisions of the agreement by which they procured the consent judgment and obtained possession of the fund, and were guilty of a breach of the trust created and devolved upon them by the joint operation of said judgment and agreement; and, therefore, under the principles repeatedly announced by this court in its decisions, the Circuit Court in which the consent judgment was rendered is vested with ancillary jurisdiction to entertain this suit in equity for the purposes of granting to the other parties to the former suit and their privies equitable relief against the aforesaid unjust, inequitable and fraudulent use of said judgment and the process of the court that rendered it, and the violation of said contract, and the breach of said trust, and to determine the conflicting claims of the parties to said fund, and to compel appellant to account for the trust fund converted by him and pay the same over to the parties found to be entitled to it, and to secure to the parties the fruits, benefits and advantages of the proceedings and judgment in the former suit, and to regulate the operation of said judgment by engrafting a trust upon it.

Authorities.

Krippendorf vs. Hyde, 110 U. S., 276, 287.
Pacific R. Co. vs. Missouri P. R. Co., 111 U. S., 505.
New Orleans vs. Fisher, 180 U. S., 185, 199.
Pennock vs. Coe, 23 How., 117.
Clark vs. Mathewson, 12 Pet., 164.
Dunn vs. Clark, 8 Pet., 1.
Jones vs. Andrews, 10 Wall., 327.
Root vs. Woolworth, 150 U. S., 401.
Freeman vs. Howe, 24 How., 450.

Milwaukee, etc., R. R. Co. vs. Soutter, 2 Wall., 609, 645.
Hatch vs. Dorr, 4 McLean, 112; Fed. Cas., 6206.
Babcock vs. Millard, Fed. Cas., 699.
Dunlap vs. Stetson, 4 Mason, 349, Fed. Cas., 4164.
The Cortez Co. vs. Tannhauser, 9 Fed. Rep., 226.
Bank vs. Leland, Fed. Cas., 9452.
Thompson vs. McReynolds, 29 Fed. Rep., 657.
Lamb vs. Ewing, 54 Fed. Rep., 272.
Bank vs. Turnbull, 16 Wall., 190.

ARGUMENT. Was appellant guilty of a fraudulent use of the judgment and the process of the court which rendered it? It does not require a great multiplicity of acts and facts to constitute a fraud. Appellant's title would not have been accepted by the government and the appropriation paid to him but for the consent judgment. (See opinion of the attorney-general, Rec. 474-478.) He procured that judgment by binding himself to collect the fund, and then to deal with it as stipulated in the agreement of July 13, 1887; armed with the judgment, he and Carson made their deed to the government and collected the fund, and then appellant converted the whole of it. (See his answer, where he states an account in which he appropriates the whole of it, Rec. 265-269.) These facts are undisputed. If they do not constitute a fraudulent use of the judgment, it would be difficult to make an improper use of the judgment of a court. In the Milwaukee and Minnesota Railroad Co. vs. Soutter, 2 Wall., 609, 645, an ancillary bill was sustained upon the ground that an unjust advantage had been obtained by one party over another by a perversion and abuse of the orders of the court. The ground of jurisdiction was the wrongful use of the process and orders of the court.

Under the above authorities, the following kinds or classes of bills are ancillary:

A bill filed to continue a former litigation in the same court, or which relates to some matters already partly litigated in the same court, by the same parties or their representatives, standing in the same interest; or which seeks to obtain any equitable relief in regard to, or connected with, or growing out of any judgment rendered at law in the same court; or to secure the fruits, benefits and advantages of the proceedings and judgment in a former suit in the same court, by the same parties, or

privies, standing in the same interest; or which seeks to prevent a party from using a judgment of the same court for fraudulent purposes, or to restrain a party from using a judgment to perpetrate an injustice, or to obtain an inequitable advantage over other parties to the judgment.

The jurisdiction of ancillary bills does not depend upon matters apparent upon the face of the record in the former suit; but such jurisdiction may, and often does rest upon facts *dehors* the record in the former suit. The suit in this case was brought for the following objects and purposes: (1) To continue the former litigation and controversy which was embraced in and partly litigated in suit No. 248, by the same parties. It is alleged in the original bill (Rec. 9, 10), and proved by the agreement exhibit D. (Rec. 27, 28), that the parties stipulated that, in the trial of suit No. 248, the issues made by the pleadings therein should not be litigated nor adjudicated, but a consent judgment should be rendered, vesting the title to Fort Brown in Stillman and Carson, who should convey it to the government and collect the fund, and then the claims of the parties, being transferred from the land to the fund, should be determined, and the fund disbursed; and the evidence shows, indisputably, that the plan as agreed upon was carried out to the letter, so far as to enable Stillman to get possession of the fund which he at once converted. The pleadings in this case and the pleadings in the former case show that the issues in the two cases are identical; this is a continuation of the former controversy, and no reasoning can explain away the fact. (2) This suit is brought to obtain and secure the fruits, benefits and advantages of the proceedings and judgment in the former suit. It is alleged in the original bill (Rec. 13), and proved by the agreement exhibit D. (Rec. 26, 27), that the title to Fort Brown was by the judgment in the former suit vesed in Stillman and Carson in trust for the use and benefit of all the parties to the former suit, and that they, Stillman and Carson, so accepted the title to the property as trustees for the benefit of all the parties, that they might be able to convey a good and valid title to the government, and thereby secure and collect the fund of $160,000.00, and have it forthcoming to be paid to the parties found to be the owners of the land. It follows, then, that the former judgment was rendered for the benefit of all the parties to the suit, and the fruits of that judgment, as anticipated and stipu-

lated by all, was the production of the fund in Texas to satisfy the demands of all just claimants. That result was frustrated by the wrongful act of appellant, and this suit was brought to secure the result intended to be accomplished by the consent judgment. (3) This suit is brought to prevent appellant from using the consent judgment in the former suit to perpetrate injustice and fraud, and to obtain an inequitable advantage over the other parties to the judgment. (See original bill, Art. XIII, Rec. 13-15, and the prayer of the bill, Rec. 17, 19.) (4) This suit is brought to engraft a trust on the consent judgment. (Original bill, Art. XII, Rec. 13, exhibit D., 266-29.) (5) This suit is brought to obtain equitable relief in regard to and connected with and growing out of the judgment in the former suit. (6) The issues presented for trial by the pleadings in this present suit arise out of the record, proceedings and judgment in the former suit. In the determination of the present suit, the lower court was required to review and act upon the record, proceedings, and judgment in the former suit, and to investigate the facts and to act judicially upon the controversy, rights, titles and interests involved in the former suit.

It is submitted that, the purposes of this suit, as here enumerated, and which are by the record indubitably shown to inhere in the suit, are abundantly sufficient to bring the case within the above cited authorities, as ancillarry to the former suit, and to sustain the jurisdiction of the court.

Fourth Proposition.

The Circuti Court having, in its interlocutory decree of July 15, 1897, (Rec. 62-63), found, as a fact, and so decreed, that it, the said Circuit Court, "has jurisdiction of this cause as being a suit ancillary to said cause, No. 248 on the law docket of this court," and said decree of July 15, 1897, having been, on appeal by Carson prosecuted for the benefit of himself and his co-trustee, Stillman, affirmed *in totidem verbis*, by the United States Circuit Court of Appeals of the Fifth Circuit, as appears by the mandate of that court, (Rec. 133-136), whose judgment remains unreversed, the said Circuit Court was bound to and did execute said mandate and retain jurisdiction of the cause and proceed to final decree in accordance with the mandate of the appellate court; and, therefore, no appeal will lie upon the question of jurisdiction from the final decree in this cause, and this appeal should be

dismissed. If the Circuit Court of Appeals erred in its judgment affirming the said decree of the Circuit Court of July 15, 1897, the appropriate remedy lay in a certiorari from this court to that court.

Authorities.

Aspen Mining and Smelting Co. vs. Billings, 150 U. S., 31-38.

Stewart vs. Solomon, 97 U. S., 361.

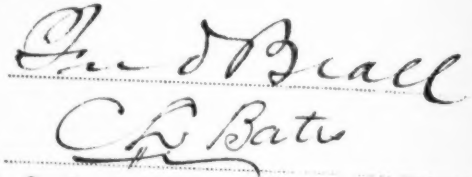
Texas & P. R. Co. vs. Anderson, 149 U. S., 237.

Argument. It is averred in the bill that Carson is a citizen of Brownsville, Cameron County, Texas; that he is insolvent, and that he is the duly and lawfully authorized agent of Stillman in Texas, and represents their mutual interests in resisting all efforts of the claimants to compel an accounting by them of the trust fund of $160,000.00 (Rec. 16), and that they are fraudulently conspiring together to prevent a distribution of the fund to the owners. (Rec. 14.) These allegations are proved by the conduct of Stillman and Carson both before and after this litigation began. Although Carson claimed that his testatrix owned one-half the fund in question, he gave to John A. Garver, appellant's New York attorney, a power of attorney to collect and receipt for him for the fund, without taking any precautions to secure the part of the fund claimed by him. (Rec. 35, 91, 225.). And throughout this litigation Carson has acted in concert with Stillman to defeat the jurisdiction of the court, and prevent an accounting for the fund, although Carson claimed that his testatrix, whose estate was being administered in the probate court of Cameron County, Texas, owned one-half the fund. The pleas, demurrers, answers and other pleadings of Stillman and Carson are substantial duplicates of each other throughout this record. The first paper filed in the case by Carson was his answer to the rule to show cause why a receiver should not be appointed and an injunction granted (Rec. 55-59); at that time Stillman had been served with a subpoena and also with notice of the application to appoint receiver and grant injunction (36-54), but had not appeared in the cause at that time. But Mr. Carson appeared and answered the rule (Rec. 55-59) attacking the jurisdiction of the court in a most elaborate pleading, and his contention being overruled he appealed to the Circuit Court of Appeals; and the state of the record can leave no doubt upon the mind that he prosecuted that appeal for the benefit of Stillman, and he should

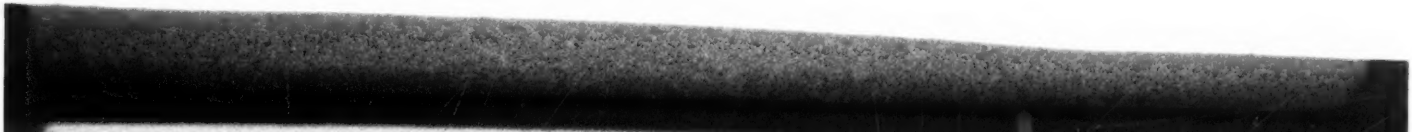
be bound by the result. The defense outlined in Carson's answer to the rule (55-59) was subsequently embraced in the plea of Stillman and Carson to the jurisdiction (Rec. 71-79), and throughout this litigation they have made common cause, as the record fully shows.

It is respectfully submitted that the lower court had jurisdiction to entertain this suit as ancillary to suit No. 248, and the decree should be affirmed; or if the court should be of opinion that appellant is concluded upon the question of jurisdiction by the judgment of the United States Circuit Court of Appeals, then it is respectfully submitted that this appeal should be dismissed.

Respectfully submitted,



Counsel for C. B. Combe, Independent Executor of Stephen Powers, Deceased; C. B. Combe, et al., Appellees.



IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. 174.

JAMES STILLMAN, APPELLANT,

vs.

C. B. COMBE, EXECUTOR et al.

and

RAFAELA M. de G. CAVAZOS AND CHILDREN,

APPELLEES.

BRIEF AND ARGUMENT OF J. D. CHILDS,

Of San Antonio, Texas, Counsel for Appellees.

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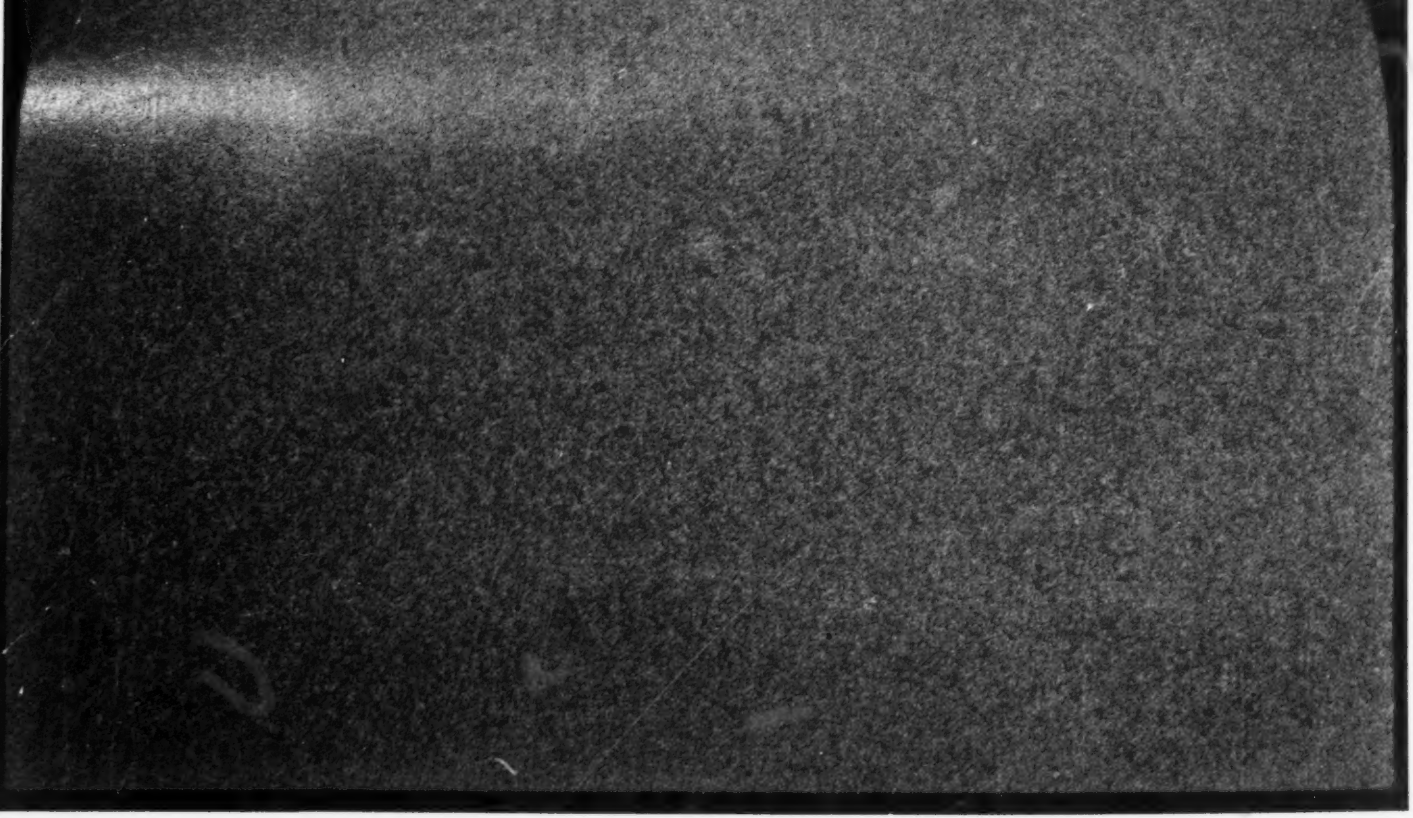

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BRIEF AND ARGUMENT OF J. D. CHILDS,

Of San Antonio, Texas, Counsel for Appellees,

Mrs. Rafaela M. de G. Cavazos and Her Children: Rafaela G. M. Cavazos, Adela G. M. Cavazos, Josefina G. M. Cavazos, Julio G. M. Cavazos, Pedro G. M. Cavazos, and Jose G. M. Cavazos, who were Intervenors in the court below, having asserted interests therein independent of both plaintiffs and defendants and all other parties.

STATEMENT OF THE CASE BY COUNSEL FOR CAVAZOS Intervenors Below and Appellees Herein.

FIRST. This brief and argument is prepared without having seen any brief of appellant, therefore reference will be made only to the Assignments of Error, as made by appellant, Record p. 554 *et seq.*

The case has been fully stated by appellees Combe in their brief filed therein October 29th, 1904. This statement will be adopted with the further statement that the Cavazos, appellees, were permitted by the lower court to intervene, over the strenuous objections and resistance of Appellant, James Stillman and of Thomas Carson, both defendants, below, and upon final decree were awarded as heirs of Pedro G. Cavazos, deceased, one-third (1-3) of $44,110.02. (Rec. pp. 406 to 416, and Rec. pp. 567 to 570.)

And having this substantial interest in the judgment herein, they come now and present this as their separate brief and argument.

SECOND. The six Assignments of Error of appellant, being of similar nature and all based upon the contention that this suit is not ancillary to the Common Law Action No. 248, will be discussed together.

The reason and argument in said assignments of error are not tenable, because:—

1. James Stillman could not appear in Texas and use the machinery of the Texas court in said C. L. Action No. 248 for one purpose and before that purpose was consummated revoke and abjure its jurisdiction, when he was called upon to account in the same court for the proceeds of the money acquired by him under the orders and decrees of that court.

It is an elementary principle that a suitor cannot invoke the aid of any jurisdiction upon part of the merits of a cause, without yielding and submitting to it upon all questions therein involved unto its termination.

2. The agreement (Rec. pp. 26 to 30) was signed by James Stillman and Thomas Carson, July 13th, 1887. The judgment of the court which emanated from said agreement although not

appearing on the face of said decree was had July 14th, 1887 (Rec. p. 30) and it also appears that on July 15th, 1887, which was subsequent to the rendition of said judgment that all the parties to said agreement including Stillman and Carson voluntarily appeared before a notary public and acknowledged and reaffirmed said agreement. (Rec. p. 30).

This agreement and its ratification subsequent to the rendition of said judgment of July 14th, 1887, clearly expresses a trust in James Stillman and Thomas Carson.

It clearly shows that the judgment in question was a consent decree, and was not final, but only had for convenience in order that the said trustees might collect the $160,000.00 and pay it over to the arbitrators therein mentioned, and thus settle the controversy out of court. And as declared by the Circuit Court of Appeals of this circuit upon appeal of a former cause in which this same agreement was in issue, it "is to be commended rather than adversely criticised." Salinas vs. Stillman, 14 C. C. A., 54.

In this connection I cannot use stronger and more apt language than the same Circuit Court of Appeals of this circuit uses in speaking of this same agreement on a former appeal of this cause when it says: "To the eye of natural justice it would seem that if that court has not jurisdiction of the parties to the agreement that was in truth the basis of its judgment in Cause No. 248, with power to protect the beneficiaries in the trust clearly created by that Agreement, and which has so far borne fruit as to bring into the possession of the trustees the fund which was the material subject, not only of the Agreement, but of that litigation, its jurisdiction, proceeding, and processes have been successfully misused by the parties sought by this bill to be charged as trustees." Carson vs. Combe, 29 C. C. A., 669. I also desire to refer the court to this case as well as to the Salinas case *supra* for a brief but accurate statement of the facts which led to the said agreement and judgment.

3. It occurs to the writer that this suit is undoubtedly ancillary to C. L. Suit No. 248, and that the U. S. Circuit Court of the Southern District of Texas at Brownsville, Texas, which was formerly in the Western District of Texas, had jurisdiction over Stillman and Carson, under the principles laid down in the leading case of Carey vs. H. & T. C. Ry. Co., 161 U. S., 113, 40 L., 638. See also Krippendorf vs. Hyde, 110 U. S., 276, 28 L., 145. And many cases cited in Notes on U. S. Reports, Supplement by Thompson, Vol. 2, p. 605 (Ed. 1905), all recent Federal cases.

4. This ancillary suit having been brought by complainants against James Stillman and Thomas Carson individually and as administrator of the estate of Maria Josefa Cavazos (Rec. p. 2) could not have been brought and maintained as to Carson in said capacity in any other State than Texas, and had to be brought in the jurisdiction in which Cameron County, Texas, is situated, the said Carson having been appointed and qualified as such administrator C. T. A. in the county court of Cameron County, Texas, and this rule applies to Federal as well as State courts.

Johnson vs. Powers, 139 U. S., 156, 35 L. 112.

Kerr vs. Moon, 9 Wheat., 561, 6 L. 161.

Batts Revised Statutes of Texas, Art. 1194, Sec. 6.

5. Stillman and Carson being joint or co-trustees of the $160,000.00 fund, if Stillman was guilty of appropriating or converting said money it was a fraud against all of the claimants as well as said estate of Maria J. Cavazos, deceased. Carson as such administrator could not sue Stillman out of the courts of Texas.

Johnson vs. Powers, 139 U. S., 156, 35 L. 112.

Kerr vs. Moon, 9 Wheat, 561, 6 L. 161.

Then Stillman acting with a power of attorney from Carson, through his agent, John Garver (Rec. p. 35), was doubly a trustee with said Carson. Said Stillman was first made a co-trustee with Carson by the Agreement (Rec. p. 26), and was afterwards made the trustee of Carson in the fiduciary capacity of representative of said estate of Maria J. Cavazos, and incidentally created such by the county probate court of Cameron County, Texas, he was answerable in a two-fold capacity to the Texas courts.

The complainants could not sue Carson and Stillman in the same suit in any other State than Texas. Carson could not as administrator sue Stillman in any other State than Texas. The agreement above referred to was one transaction and indivisible, then what would be the reasoning in going to New York to sue Stillman for the joint wrong of Stillman and Carson, which said wrong was so connected as to be one and the same transaction?

Why should Stillman not come to Texas as well as Carson attempt to sue in New York?

Carson could not sue in New York, then there was but one forum where the suit could properly be brought and that one was the Western, now the Southern, District of Texas.

Besides this suit is ancillary, and the court has possession of and gave the orders which secured the *res*, this, therefore, draws to the lower court all controversies concerning the *res*.

Byers vs. McAuley, 149 U. S., 614.

Hayes vs. Pratt, 147 U. S., 570.

Green vs. Creighton, 23 How., 90.

Chambers vs. Cannon, 62 Texas, 293.

Eckford vs. Knox, 67 Texas, 205.

Patton vs. Gregory, 21 Texas, 513.

I believe this case should not be disturbed on account of want of jurisdiction of the lower court. While I do not concur in the

large amount awarded to Stillman, yet I submit that the only question now before the court is one purely of jurisdiction and that the appeal should either be dismissed because of a defective certificate from the lower court or because the question of jurisdiction has already been determined by our Circuit Court of Appeals.

Otherwise the case should be affirmed with costs and 10 per cent damages for delay.

Counsel for Rafaela M. de G. Cavazos and Children, Appellees.

Supreme Court of the United States.

No. 174—October Term, 1904.

James Stillman, Appellant,
vs.
C. B. Combe, Independent Executor of the Estate of Stephen Powers, Deceased; C. B. Combe, et al.

Appeal from the Circuit Court of the United States for the Southern District of Texas.

[April 3, 1905.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from a decree of the Circuit Court, upon the single question of the jurisdiction of that Court. The jurisdiction was sustained *de bene*, on appeal from a preliminary injunction, by the Circuit Court of Appeals. 86 Fed. Rep. 202; *S. C.*, 29 C. C. A. 660. It is certified that jurisdiction was entertained solely upon the ground that this cause is ancillary to an action at law and the final judgment rendered therein. If that ground fails it is apparent from the record and is not disputed that there is no other. To decide the case it is not necessary to consider anything except the allegations of the bill, and a large part of those may be laid on one side as not material to the question here.

The purpose of the bill is to reach and distribute to the parties found entitled to the same the proceeds of a sale to the United States of land which the defendants Stillman, the appellant, and Carson, as administrator, recovered in the above-mentioned action at law. The land was occupied without right by the United States as part of the Fort Brown military reservation, and on March 3, 1885, Congress appropriated $160,000 to pay for the land and its use and occupation, but not until a complete title should be vested in the United States, the full amount of the price to be paid directly to the owners of the property. The next year certain claimants brought suit for the land, in a State Court, against Colonel Kellogg, the officer in command of the reservation. The suit was removed to the United States Circuit Court, the United States intervened, and for the purpose of settling the title set up outstanding rights in third persons. Other known claimants, including Stillman and Carson as administrator, each of whom claimed an undivided half, became or were made parties. By the local practice the respective shares of the parties might have been determined in the action as well as the principal question of the right of all or some of them to recover from Colonel Kellogg. But on July 13, 1887, most, although not all, of the claimants, including

Stillman and Carson, made an agreement on which the jurisdiction in the present cause is based.

This agreement recited that the case was likely to be tried the next day, that it was apprehended that unless a perfect title could be adjudged to some of the parties there was danger of losing the appropriation, that in the time available there was little chance of an accurate adjudication of all rights, that it was primarily desirable to have a judgment which would be satisfactory to the department at Washington, and secondarily to agree on a method of working out the exact rights of the parties, after judgment, conveyance to the Government by those adjudicated to be owners and payment of the money. It also recited the claims of others not parties to the agreement, and the belief of the contractors that those claims would fail at the trial. Therefore it was agreed that the parties to the contract would unite in procuring a judgment for the whole property in favor of Stillman and Carson administrator, that upon its being procured a conveyance should be made by the said owners to the Government and a warrant for the price upon the Treasurer of the United States obtained from the Secretary of War. After a preliminary payment the rest of the money was to be deposited in a named bank in Galveston to the credit of three arbitrators, also named. The parties to the agreement submitted their claims to these arbitrators, with somewhat blind provisions for substitution, and the arbitrators were to give their checks upon the fund to those whom they found entitled for the sums found due.

The next day after this agreement was made, on July 14, 1887, a verdict was rendered for Stillman and Carson administrator, one undivided half to each, and judgment was entered upon the same, both, it is alleged, by consent of parties. But the next steps contemplated by the agreement did not follow as quickly as anticipated. Without any fault of Stillman and Carson they did not get their pay and deliver the deed until April, 1895, nearly eight years later. At that time, according to Stillman's answer, at all events before June 14, 1897, when this bill was filed, according to the allegations of the bill, one of the arbitrators named was dead, and another refused to act, so that the arbitration agreed upon was impossible in its original form. It also appears from the decree that Stillman had expended large sums in collecting the money from the United States. The bill alleges that Stillman and Carson fraudulently appropriated to their own use the whole fund of $160,000 received from the United States. It further alleges that they are conspiring fraudulently to prevent a decision by arbitration, as agreed, and fraudulently are using the judgment to deprive the true owners of their rights. On these allegations the bill seeks not to have the arbitration carried out but to obtain a distribution of the fund by the court.

We are somewhat at a loss to add anything to a statement of the case to show how utterly without foundation is the claim of jurisdiction over this bill as an ancillary suit. The bill does not seek either to disturb the judgment or to have anything done towards carrying it out. The judgment was satisfied, and the functions of the court in the former case were at an end when the land was recovered. Stillman and Carson cannot be using it fraudulently or in any other way. Its uses all are over. The Court had nothing to do with the subsequent sale of the land, and still less with the distribution of the purchase money when the sale was made. There neither was nor ought to have been any fund in Court. It may be that the judgment would not have been the same but for the agreement of some of the parties upon those matters. But the bill does not allege that it was obtained by fraud, and, as we have said, does not seek to set it aside. The agreement no doubt put Stillman and Carson in a position of trust, but, no matter to whom it was known, it did not make Stillman and Carson trustees of the Court, as they are called in the bill. It did not extend the duties of the Court beyond the recovery of the land to seeing that the parties who recovered it, in case of a subsequent sale, should pay over in due proportion to those equitably entitled. The parties gave up their right to have the Court decide who had rights in the land and the extent of their shares, and substituted a contract and a decision out of Court. They still rely upon the contract, and they must be left to their remedy upon it.

It is suggested that the affirmance by the Circuit Court of Appeals of an interlocutory decree appointing a receiver and issuing a preliminary injunction against Stillman and Carson using the judgment for the purpose of depriving the other parties in interest of their rights in the $160,000, in some way prejudices the present appeal. It is enough to say that the action of the Circuit Court of Appeals was on the appeal of Carson alone, Stillman not having appeared in the action.

Decree reversed, with directions to make restitution to the Appellant and to dismiss the bill.

True copy.

Test:

Clerk Supreme Court, U. S.